

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

INDIAN HARBOR INSURANCE	)	
COMPANY, a North Dakota	)	
Corporation,	)	
	)	
Plaintiff,	)	FILED: JUNE 20, 2008
	)	No.: 08CV3543
vs.	)	JUDGE LEFKOW
	)	MAGISTRATE JUDGE MASON
	)	RCC
2930 NORTH SHERIDAN, LLC, an	)	
Illinois Limited Liability Corporation,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

**COMPLAINT**

NOW COMES Plaintiff, INDIAN HARBOR INSURANCE COMPANY (hereinafter, "Indian Harbor"), by and through its attorneys, McDonald & McCabe, LLC, and as its Complaint against Defendant, 2930 NORTH SHERIDAN, LLC (hereinafter, "Sheridan"), states as follows:

**THE PARTIES**

1. Plaintiff Indian Harbor is a North Dakota corporation, with its principal place of business in Stamford, Connecticut, and is a citizen of both North Dakota and Connecticut for the purposes of 28 U.S.C. § 1332(c).

2. Defendant Sheridan is an Illinois limited liability corporation, with its principal place of business in the State of Illinois. Upon information and belief, Sheridan's member is a citizen Illinois; and thus, for the purposes of 28 U.S.C. § 1332, is a citizen of Illinois. Upon information and belief, the member of Sheridan is the following:

a. Mr. Robert Kroupa, a resident and citizen of Illinois.

### **JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 2201(a), as Indian Harbor seeks a declaratory judgment that Indian Harbor has no obligation to pay for certain losses allegedly incurred by Sheridan.

4. This action contains parties of diverse states and an amount in controversy exceeding \$75,000, exclusive of interests and costs of this litigation.

5. Venue is appropriate in the Court, pursuant to 28 U.S.C. § 1391, as, upon information and belief, the Defendant resides in the Northern District of Illinois.

### **FACTUAL ALLEGATIONS**

6. On September 19, 2007, the Illinois Department of Public Health, pursuant to its grant of authority under the Asbestos Abatement Act (105 ILCS 105) and the Commercial and Public Building Asbestos Abatement Act (225 ILCS 207), ordered an evacuation of Sheridan's building located at 2930 N. Sheridan Road, Chicago, Illinois (the "Building"), due to asbestos contamination of the Building.

7. At the time of the asbestos contamination (the "Occurrence"), Indian Harbor had issued a Commercial Property Policy, No. FCI 004 3213 (the "Policy"), providing property

insurance coverage to Sheridan for Sheridan's real property at the Building, including rental income derived from the Building, subject to all the terms and conditions of the Policy. A copy of the Policy is attached hereto as Exhibit A.

8. At the time of the Occurrence, Sheridan was converting rental apartment units in the Building to condominiums.

9. Subsequent to the Occurrence, Sheridan undertook a plan to abate the asbestos contamination in the Building. Sheridan notified Indian Harbor of the Occurrence on or about September 21, 2007.

10. In a letter dated May 22, 2008, Sheridan submitted a Sworn Statement in Proof of Loss alleging damages in an amount of \$22,978,888.18, with several categories of losses listed as "continuing." The Sworn Statement in Proof of Loss lists several categories of damages including, *inter alia*, costs to repair the Building, lost rents, attorneys fees, and lost profits. A copy of Sheridan's Sworn Statement in Proof of Loss is attached as Exhibit B.

11. Following a review of the facts and circumstances surrounding the Occurrence, Indian Harbor denied coverage for the damages allegedly incurred as a result of the Occurrence in a letter dated June 20, 2008.

**COUNT I**  
**Declaratory Judgment As To Coverage:**  
**Excluded Cause of Loss**

12. Plaintiff repeats, realleges and incorporates by reference paragraphs 1 through 12, above, as though fully set forth herein.

13. An actual controversy exists between the parties hereto as to their respective rights and obligations under the Insurance Contract, making this issue proper for disposition by

way of declaratory judgment pursuant to 28 U.S.C. § 2201.

14. The Policy contains the following Asbestos Material Endorsement (asbest.mat(F1) 2/95), which is provided in full in Exhibit A:

**ASBESTOS MATERIAL ENDORSEMENT**

Notwithstanding any provision in the Policy to which this endorsement is attached, this policy does not insure against loss or expense resulting from:

1. demolition or increased cost of reconstruction, repair, debris removal or loss of usenecessitated [sic] by the enforcement of any law or ordinance requiring asbestos material.
2. any governmental direction or request declaring the asbestos material present in or part of orutilized [sic] on any undamaged portion of the insured's property can no longer be used for thepurpose [sic] for which it was intended or installed and must be removed.

The total amount recoverable for both loss to property and asbestos removal expense under this policy endorsement shall be a part of and not in addition to the limits stated in the Policy.

All other terms of this policy remain unchanged.

15. The Policy contains the following Pollution and Contamination Exclusion (pollcont.exc(F1) 2/95), which is provided in full in Exhibit A:

**POLLUTION AND CONTAMINATION EXCLUSION**

This policy does not cover loss or damage to property covered caused directly or indirectly by the release or discharge or dispersal of toxic or hazardous substances, contaminants or pollutants. Nor will we cover the cost of removal, disposal, decontamination or replacement of insured property which has been contaminated by toxic or hazardous substances, contaminants or pollutants and which by law or civil authority must be restored, disposed of or decontaminated. Such loss to property covered is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. If loss otherwise covered by this policy occurs and the cost of removal of debris is increased due to the presence of toxic or hazardous substances,

contaminants, or pollutants, this policy will only be liable for the cost of debris removal which would have been incurred had no toxic or hazardous substances, contaminants or pollutants been present in, on or about the covered property to be removed.

All other terms and conditions of this policy remain unchanged.

16. The Causes of Loss – Special Form (CP 10 30 04 02) forms part of the Policy, and is provided in full in Exhibit A. The Causes of Loss – Special Form contains, in pertinent part, the following provision:

**B. Exclusions**

\* \* \*

2. We will not pay for loss caused by or resulting from any of the following:

\* \* \*

- I. Discharge, dispersal, seepage, migration, release or escape of “pollutants” unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the “specified causes of loss”. But if the discharge, dispersal, seepage, migration, release or escape results in a “specified cause of loss”, we will pay for the loss or damage caused by that “specified cause of loss”.

17. The Ordinance or Law Coverage endorsement (CP 04 05 04 02) forms part of the Policy, and is provided in full in Exhibit A. The Ordinance or Law Coverage endorsement contains, in pertinent part, the following provision:

**C.** We will not pay under Coverage **A, B** or **C** of this [sic] endorsement for:

1. Enforcement of any ordinance or law which [sic] requires the demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by “pollutants” or due to the presence, growth, proliferation, spread or any activity of “fungus” wet or dry rot or bacteria; or

2. The costs associated with the enforcement [sic] of any ordinance or law which requires [sic] any insured or others to test for, monitor [sic], clean up, remove, contain, treat, detoxify [sic] or neutralize or in any way respond to, or [sic] assess the effects of "pollutants", "fungus", wet [sic] or dry rot or bacteria.

18. Pursuant to the Asbestos Material Endorsement (asbest.mat(F1) 2/95), the Pollution and Contamination Exclusion (pollcont.exc(F1) 2/95), and Causes of Loss – Special Form (CP 10 30 04 02) Section **B.2.1.**, and the Ordinance or Law Coverage endorsement, the Policy excludes coverage for loss, damage, or expense related to, caused by, or resulting from asbestos contamination, release, dispersal, or discharge.

19. Sheridan's alleged damages are related to, caused by, or resulting from asbestos contamination, release, dispersal, or discharge.

20. As the Policy excludes Sheridan's alleged losses, damages, or expenses, Indian Harbor has no obligation to pay Sheridan's claim.

WHEREFORE, Plaintiff INDIAN HARBOR INSURANCE COMPANY prays that this Court enter a declaratory judgment in its favor and against Defendant 2930 NORTH SHERIDAN, LLC, declaring, adjudging, and decreeing as follows:

- (i) Sheridan's claimed losses, damages, or expenses related to the Occurrence were related to, caused by, or resulting from asbestos contamination, release, dispersal, or discharge;
- (ii) The terms and conditions of the Policy exclude coverage for any and all Building and personal property losses, damages, or expenses related to, caused by, or resulting from asbestos contamination, therefore, the Occurrence was not a covered cause of loss;

- (iii) Indian Harbor has no obligation to pay Sheridan any amount for alleged losses, damages, or expenses related to the Occurrence; and
- (iv) Indian Harbor is entitled to costs and attorneys' fees related to this action, together with any such other and further relief as this Court deems just and proper.

**COUNT II**  
**Declaratory Judgment As To Coverage:**  
**Fortuity**

21. Plaintiff repeats, realleges and incorporates by reference paragraphs 1 through 12, above, as though fully set forth herein.

22. Sheridan knew or should have known of the presence of asbestos-containing materials in the Building prior to the Occurrence.

23. The Policy provides coverage only for events that are fortuitous.

24. Based on knowledge Sheridan had or should have had, Sheridan knew or should have known that asbestos contamination and damage was substantially certain to occur if appropriate procedures were not taken to control asbestos-containing materials during renovation and construction.

25. As Sheridan knew or should have known of the presence of asbestos in the Building and the alleged damages were the result of Sheridan's failure to take appropriate measures to contain the asbestos, the loss was not fortuitous and Indian Harbor has no obligation to pay for any of Sheridan's alleged damages.

WHEREFORE, Plaintiff INDIAN HARBOR INSURANCE COMPANY prays that this Court enter a declaratory judgment in its favor and against Defendant 2930 NORTH SHERIDAN,

LLC, declaring, adjudging, and decreeing as follows:

- (i) The Occurrence was not a fortuitous event;
- (ii) The Policy provides coverage only for events that are fortuitous, therefore, the Occurrence was not a covered cause of loss;
- (iii) Indian Harbor has no obligation to pay Sheridan any amount for alleged losses, damages, or expenses related to the Occurrence; and
- (iv) Indian Harbor is entitled to costs and attorneys' fees related to this action, together with any such other and further relief as this Court deems just and proper.

Respectfully,  
INDIAN HARBOR INSURANCE COMPANY

By: s/ Nicholas R. Novak on behalf of Thomas A. McDonald  
Nicholas R. Novak on behalf of Thomas A. McDonald

Thomas A. McDonald  
Michael P. Rohan  
Nicholas R. Novak  
McDonald & McCabe, LLC  
225 West Wacker Drive  
Suite 2100  
Chicago, IL 60606  
Firm ID: 38752



JUDGE LEFKOW

MAGISTRATE JUDGE MASON

RCC

**THIS IS A TRUE & CERTIFIED COPY**POLICY NUMBER MUST APPEAR ON ALL  
CORRESPONDENCE

(1)

Policy Number

FCI 004 3213

**Indian Harbor Insurance Company**

70 Seaview Ave, Stamford, CT 06902

Please forward correspondence and claims to our Administrative Office: WKF&amp;C Agency, Inc.

One Huntington Quadrangle

Suite 4N20

Melville, NY 11747

**COMMERCIAL PROPERTY POLICY  
COMMON POLICY DECLARATIONS**

POLICY PERIOD		At 12:01 A.M. Standard Time at your Mailing Address Shown Below.	RENEWAL OF NUMBER	Account Number
Effective Date	Expiration Date			
04/13/2007	04/13/2008			

**NAMED INSURED AND ADDRESS**

2930 N. Sheridan, LLC & 3033 N. Sheridan, LLC  
20 N. Clark Street  
Suite 550  
Chicago, IL 60602

**PRODUCER NAME AND ADDRESS**

Avreco  
550 West Van Buren  
12th Floor Suite 1200  
Chicago, IL 60607  
Phone: 312-922-7570

**BUSINESS DESCRIPTIONS:**

DWELLING OPERATORS, EXC. APARTMENTS

In return for the payment of the premium and subject to all the terms of this policy, the company indicated above agrees to provide the insurance stated in this policy.

**PREMIUM SUMMARY:**

This policy consists of the following coverage parts for which a premium is indicated. This premium may be subject to adjustment.

Commercial Property Coverage Non-Terrorism Part	\$57,824.00
Commercial Property Coverage Terrorism Part	Not Taken
Commercial Inland Marine Coverage Non-Terrorism Part	\$0.00
Commercial Inland Marine Coverage Terrorism Part	\$0.00
Commercial Crime Coverage Part	\$0.00
Commercial Auto Coverage Part	\$0.00
Garage Coverage Part	\$0.00

**A Hurricane Catastrophe Fund**  
Assessment fee of 1% applies to all  
Florida premium.

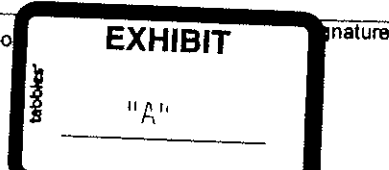
**A fee of \$4.00 applies to the EMPA**  
Trust Fund for all Florida Policies.

Inspection Fee	\$300.00
Policy Fee	\$175.00

Minimum Earned %	25.00%
<b>TOTAL</b>	<b>\$58,299.00</b>

**FORM(S) AND ENDORSEMENT(S) MADE A PART OF THIS POLICY AT TIME OF ISSUE\***

\*Omits applicable forms and endorsements if shown in specific Coverage Part/Coverage Form Declaration



**COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS**

Policy No.: FCI 004 3213

Effective Date: 4/13/2007 \*\*

12:01 A.M. Standard Time

**NAMED INSURED: 2930 N. Sheridan, LLC & 3033 N. Sheridan, LLC****DESCRIPTION OF PREMISES:**

PREM/BLDG NO LOCATION, CONSTRUCTION AND OCCUPANCY

See Schedule attached

**COVERAGES PROVIDED - Insurance at the described premises applies only for which a limit of insurance is shown**

PREM/BLDG NO	CODE	COVERAGE	LIMIT OF INSURANCE	ACV/RC*	COVERED CAUSES OF LOSS	COINSURANCE**	RATES
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See Schedule attached

\*RC means Replacement Cost \*\*Extra Expense Coverage, Limits on Loss Payment

**OPTIONAL COVERAGES - Applicable only when entries are made in the schedule below**

PREM/BLDG NO	CODE	COVERAGE	LIMIT OF INSURANCE	COVERED CAUSES OF LOSS	COINSURANCE**	RATES
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PREM/BLDG NO	***MONTHLY LIMIT OF INDEMNITY(FRACTION)	MAXIMUM PERIOD OF INDEMNITY (X)	***EXTENDED PERIOD OF INDEMNITY (DAYS)
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\*RC means Replacement Cost \*\*Extra Expense Coverage, Limits on Loss Payment \*\*\*Applies To Business Income Only

**MORTGAGE HOLDERS**

PREM/BLDG NO MORTGAGE HOLDER NAME AND MAILING ADDRESS

See Schedule attached

**DEDUCTIBLE: \$10,000.00****FORMS AND ENDORSEMENTS**(other than applicable Forms and Endorsements shown elsewhere in the policy):  
Forms and Endorsements applying to this Coverage Part and made part of this policy at time of issue: See Schedule attached**Coverage Exception**

Applicable only to Specific Premises/Coverages	Prem No.	Bldg. No.	Coverages	Form Numbers
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**PREMIUM**

Premium for this Coverage Part \$57,824.00

Minimum Premium for this Coverage Part: 25 %

**THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THIS INSURED AND THE POLICY PERIOD**

\*\*Inclusion of Date Optional

**ENDORSEMENT NO. 1**

Named Insured: Sheridan Tower Condominium Association 2930 N. Sheridan, LLC 3033 N. Sheridan, LLC

Policy Effective Date: 04/13/2007

Policy Expiration Date: 04/13/2008

This endorsement effective: 12:01 A.M. 06/19/2007 forms a part of  
Policy No: FCI 004 3213 Indian Harbor Insurance Company

**Amendatory Endorsement**

In consideration of the premium shown below, it is hereby understood and agreed this endorsement is attached to and forms part of the above policy and is effective as shown above. This endorsement amends only the changes which are indicated by an (x) in the box immediately preceding such change:

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Policy is   | 6. <input type="checkbox"/> Endorsement No. is null and void                  |
| 2. <input type="checkbox"/> Item(s) listed below are the policy schedule.         | 7. <input type="checkbox"/> Description of item(s) is amended as shown below. |
| 3. <input checked="" type="checkbox"/> Name of Insured is amended as shown below. | 8. <input type="checkbox"/> Limit of Liability is as shown below.             |
| 4. <input type="checkbox"/> Insured mailing address is amended as shown below.    | 9. <input type="checkbox"/> Policy Reinstated                                 |
| 5. <input type="checkbox"/> Policy term is amended to:                            | 10. <input type="checkbox"/> Other, as shown below                            |

.....  
Sheridan Tower Condominium Association  
2930 N. Sheridan, LLC  
3033 N. Sheridan, LLC

**Breakdown:**

\$	0.00 Premium
\$	0.00 Terrorism Premium
\$	0.00 Grand Total

Issue Date: 12/03/2007

  
\_\_\_\_\_  
Authorized Representative

**ENDORSEMENT NO. 2**

Named Insured: 2930 Sheridan Tower Condominium Association 2930 N. Sheridan, LLC 3033 N. Sheridan, LLC

Policy Effective Date: 04/13/2007

Policy Expiration Date: 04/13/2008

This endorsement effective: 12:01 A.M. 04/13/2007 forms a part of  
Policy No: FCI 004 3213 Indian Harbor Insurance Company

**Amendatory Endorsement**

In consideration of the premium shown below, it is hereby understood and agreed this endorsement is attached to and forms part of the above policy and is effective as shown above. This endorsement amends only the changes which are indicated by check in the box immediately preceding such change:

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Policy is   | 6. <input type="checkbox"/> Endorsement No. is null and void                  |
| 2. <input type="checkbox"/> Item(s) listed below are the policy schedule.         | 7. <input type="checkbox"/> Description of item(s) is amended as shown below. |
| 3. <input checked="" type="checkbox"/> Name of Insured is amended as shown below. | 8. <input type="checkbox"/> Limit of Liability is as shown below.             |
| 4. <input type="checkbox"/> Insured mailing address is amended as shown below.    | 9. <input type="checkbox"/> Policy Reinstated                                 |
| 5. <input type="checkbox"/> Policy term is amended to:                            | 10. <input type="checkbox"/> Other, as shown below                            |

.....  
2930 Sheridan Tower Condominium Association 2930 N. Sheridan, LLC 3033 N. Sheridan, LLC

**Breakdown:**

\$	0.00 Premium
\$	0.00 Terrorism Premium
\$	<u>0.00 Grand Total</u>

Issue Date: 03/24/2008

  
\_\_\_\_\_  
Authorized Representative

## **NOTICE TO POLICYHOLDERS**

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Dear Policyholder:

On the declaration page of your insurance policy you will find important information about your insurance coverage, including the policy premium. XL believes that it is important for policyholders to know that the insurance premium you pay for this policy includes not only the cost for the insurance provided by XL but it may also include the compensation we may pay to the insurance producer who has arranged for the placement of your insurance with XL.

We at XL are committed to full transparency concerning the amount of premium allocated to insurance producer compensation. In the event that you have a question about the amount of compensation paid to the insurance producer for your insurance policy, we encourage you to contact your insurance producer.

Thank you for insuring with XL.

## NOTICE TO POLICYHOLDERS

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### FRAUD NOTICE

- Arkansas** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
- Colorado** It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claiming with regard to a settlement or award payable for insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.
- District of Columbia** WARNING: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.
- Florida** Any person who knowingly and with intent to injure, defraud, or deceive any insurance company files a statement of claim containing any false, incomplete, or misleading information is guilty of a felony of the third degree.
- Workers Compensation:** An injured employee or other party shall provide his signature in acknowledgement of the following statement: "Any person who, knowingly and with intent to injure, defraud, or deceive any employer or employee, insurance company, or self-insured program, files a statement of claim containing any false or misleading information is guilty of a felony of the third degree." If the injured party refuses to sign the document attesting that he/she has reviewed, understands, and acknowledges the statement, benefits, or payments under this chapter shall be suspended until such signature is obtained.
- Hawaii** "For your protection, Hawaii law requires you to be informed that presenting a fraudulent claim for payment of a loss or benefit is a crime punishable by fines or imprisonment, or both.
- Kentucky** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.
- Louisiana** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
- Maine** It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines, or denial of insurance benefits.

## NOTICE TO POLICYHOLDERS

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- New Jersey** Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.
- New Mexico** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties.
- New York** **All commercial insurance forms, except as provided for automobile insurance:**  
"Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation."  
**Automobile insurance forms**  
"Any person who knowingly makes or knowingly assists, abets, solicits or conspires with another to make a false report of the theft, destruction, damage or conversion of any motor vehicle to a law enforcement agency, the department of motor vehicles or an insurance company, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the value of the subject motor vehicle or stated claim for each violation."  
**Fire Insurance:** "Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime. The proposed insured affirms that the foregoing information is true and agrees that these applications shall constitute a part of any policy issued whether attached or not and that any willful concealment or misrepresentation of a material fact or circumstances shall be grounds to rescind the insurance policy."
- Ohio** Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.
- Oklahoma** **WARNING:** Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.
- Pennsylvania** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.  
**Auto:** Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing any false, incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and the payment of a fine of up to \$15,000.

## NOTICE TO POLICYHOLDERS

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**Rhode Island**

**Property Insurance, Real Or Personal:**

The insurance application form shall indicate the existence of a criminal penalty for failure to disclose a conviction of arson

**Tennessee**

It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

**Workers Compensation:** It is a crime to knowingly provide false, incomplete or misleading information to any party to a workers compensation transaction for the purpose of committing fraud. Penalties include imprisonment, fines and denial of insurance benefits.

**Virginia**

It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.



## NOTICE TO POLICYHOLDERS

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### PRIVACY POLICY

The XL America, Inc. insurance group (the "Companies"), believes personal information that we collect about our customers, potential customers, and proposed insureds (referred to collectively in this Privacy Policy as "customers") must be treated with the highest degree of confidentiality. For this reason and in compliance with the Title V of the Gramm-Leach-Bliley Act ("GLBA"), we have developed a Privacy Policy that applies to all of our companies. For purposes of our Privacy Policy, the term "personal information" includes all information we obtain about a customer and maintain in a personally identifiable way. In order to assure the confidentiality of the personal information we collect and in order to comply with applicable laws, all individuals with access to personal information about our customers are required to follow this policy.

#### **Our Privacy Promise**

Your privacy and the confidentiality of your business records are important to us. Information and the analysis of information is essential to the business of insurance and critical to our ability to provide to you excellent, cost-effective service and products. We understand that gaining and keeping your trust depends upon the security and integrity of our records concerning you. Accordingly, we promise that:

1. We will follow strict standards of security and confidentiality to protect any information you share with us or information that we receive about you;
2. We will verify and exchange information regarding your credit and financial status only for the purposes of underwriting, policy administration, or risk management and only with reputable references and clearinghouse services;
3. We will not collect and use information about you and your business other than the minimum amount of information necessary to advise you about and deliver to you excellent service and products and to administer our business;
4. We will train our employees to handle information about you or your business in a secure and confidential manner and only permit employees authorized to use such information to have access to such information;
5. We will not disclose information about you or your business to any organization outside the XL insurance group of Companies or to third party service providers unless we disclose to you our intent to do so or we are required to do so by law;
6. We will not disclose medical information about you, your employees, or any claimants under any policy of insurance, unless you provide us with written authorization to do so, or unless the disclosure is for any specific business exception provided in the law;
7. We will attempt, with your help, to keep our records regarding you and your business complete and accurate, and will advise you how and where to access your account information (unless prohibited by law), and will advise you how to correct errors or make changes to that information; and
8. We will audit and assess our operations, personnel and third party service providers to assure that your privacy is respected.

#### **Collection and Sources of Information**

We collect from a customer or potential customer only the personal information that is necessary for (a) determining eligibility for the product or service sought by the customer, (b) administering the product or service obtained, and (c) advising the customer about our products and services. The information we collect generally comes from the following sources:

- Submission – During the submission process, you provide us with information about you and your business, such as your name, address, phone number, e-mail address, and other types of personal identification information;
- Quotes – We collect information to enable us to determine your eligibility for the particular insurance product and to determine the cost of such insurance to you. The information we collect will vary with the type of insurance you seek;
- Transactions – We will maintain records of all transactions with us, our affiliates, and our third party service providers, including your insurance coverage selections, premiums, billing and payment information, claims history, and other information related to your account;

## NOTICE TO POLICYHOLDERS

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- Claims – If you obtain insurance from us, we will maintain records related to any claims that may be made under your policies. The investigation of a claim necessarily involves collection of a broad range of information about many issues, some of which does not directly involve you. We will share with you any facts that we collect about your claim unless we are prohibited by law from doing so. The process of claim investigation, evaluation, and settlement also involves, however, the collection of advice, opinions, and comments from many people, including attorneys and experts, to aid the claim specialist in determining how best to handle your claim. In order to protect the legal and transactional confidentiality and privileges associated with such opinions, comments and advice, we will not disclose this information to you; and
- Credit and Financial Reports – We may receive information about you and your business regarding your credit. We use this information to verify information you provide during the submission and quote processes and to help underwrite and provide to you the most accurate and cost-effective insurance quote we can provide.

### Retention and Correction of Personal Information

We retain personal information only as long as required by our business practices and applicable law. If we become aware that an item of personal information may be materially inaccurate, we will make reasonable effort to re-verify its accuracy and correct any error as appropriate.

### Storage of Personal Information

We have in place safeguards to protect data and paper files containing personal information.

### Sharing/Disclosing of Personal Information

We maintain procedures to assure that we do not share personal information with an unaffiliated third party for marketing purposes unless such sharing is permitted by law. Personal information may be disclosed to an unaffiliated third party for necessary servicing of the product or service or for other normal business transactions as permitted by law.

We do not disclose personal information to an unaffiliated third party for servicing purposes or joint marketing purposes unless a contract containing a confidentiality/non-disclosure provision has been signed by us and the third party. Unless a consumer consents, we do not disclose "consumer credit report" type information obtained from an application or a credit report regarding a customer who applies for a financial product to any unaffiliated third party for the purpose of serving as a factor in establishing a consumer's eligibility for credit, insurance or employment. "Consumer credit report type information" means such things as net worth, credit worthiness, lifestyle information (piloting, skydiving, etc.) solvency, etc. We also do not disclose to any unaffiliated third party a policy or account number for use in marketing. We may share with our affiliated companies information that relates to our experience and transactions with the customer.

### Policy for Personal Information Relating to Nonpublic Personal Health Information

We do not disclose nonpublic personal health information about a customer unless an authorization is obtained from the customer whose nonpublic personal information is sought to be disclosed. However, an authorization shall not be prohibited, restricted or required for the disclosure of certain insurance functions, including, but not limited to, claims administration, claims adjustment and management, detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity, underwriting, policy placement or issuance, loss control and/or auditing.

### Access to Your Information

Our employees, employees of our affiliated companies, and third party service providers will have access to information we collect about you and your business as is necessary to effect transactions with you. We may also disclose information about you to the following categories of person or entities:

- Your independent insurance agent or broker;

## NOTICE TO POLICYHOLDERS

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- An independent claim adjuster or investigator, or an attorney or expert involved in the claim;
- Persons or organizations that conduct scientific studies, including actuaries and accountants;
- An insurance support organization;
- Another insurer if to prevent fraud or to properly underwrite a risk;
- A state insurance department or other governmental agency, if required by federal, state or local laws; or
- Any persons entitled to receive information as ordered by a summons, court order, search warrant, or subpoena.

### Violation of the Privacy Policy

Any person violating the Privacy Policy will be subject to discipline, up to and including termination.

For more information or to address questions regarding this privacy statement, please contact your broker.

## NOTICE TO POLICYHOLDERS

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### U.S TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC")

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Policyholder Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. **Please read this Policyholder Notice carefully.**

OFAC administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous

- Foreign agents
- Front organizations
- Terrorists
- Terrorist organizations
- Narcotics traffickers

as "Specially Designated Nationals and Blocked Persons". This list can be found on the United States Treasury's web site - <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance will be immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, neither payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

## LOCATION SCHEDULE

Named Insured: 2930 N. Sheridan, LLC & 3033 N. Sheridan, LLC  
 Policy Effective Date: 04/13/2007  
 Policy Expiration Date: 04/13/2008

This endorsement effective: 12:01 AM 04/13/2007 forms a part of

Policy No: FCI 004 3213

Loc. #	Bldg. #	Location Address	Coverage	Values	Covered Cause of Loss	Co-Ins.	Valuation
1	1	2930 N. Sheridan Road Chicago, IL Cook 60657	REAL PROPERTY	\$33,000,000.00	Special - Excluding Flood & Quake	NIL	RC
		Protection: Wet-100% - Local Class: Apartments Construction: Fire Resistive	RENTAL VALUE	\$3,024,000.00	Special - Excluding Flood & Quake	NIL	ALS
2	1	3033 N. Sheridan Avenue Chicago, IL Cook 60657	REAL PROPERTY	\$20,000,000.00	Special - Excluding Flood & Quake	NIL	RC
		Protection: None-n/a - n/a Class: Apartments Construction: Fire Resistive	RENTAL VALUE	\$1,800,000.00	Special - Excluding Flood & Quake	NIL	ALS

## Schedule of Forms

Named Insured 2930 N. Sheridan, LLC & 3033 N. Sheridan, LLC

Policy No: FCI 004 3213 Indian Harbor Insurance Company

Form Name	Form Edition No
Declarations Page	Dec Page
Schedule of Forms	Forms
Additional Interests	Mortsch (F1)
Location Schedule	Locsched (F1 8/95)
Fraud Notice To Policy Holders-XL	PN CW 01 0505
Privacy Notice To Policy Holders-XL	PN CW 02 0505
Business Income without Extra Expense	CP00320402
Occurrence Limit of Liability	occliab(F1 2/95)
Causes of Loss - Special Form (v. 04/02)	CP10300402
Certain Computer Related Loss Exclusion	IL09350702
Commercial Property Conditions	CP00900788
Common Policy Conditions	IL00171198
Protective Safeguards	IL04150498
Foreign Assets Control Notice to Policy Holders-XL	PN CW 05 0106
Asbestos Material Endorsement	asbest.mat(F1 02/95)
Sub-Limits of Liability	SubLimit
Pollution and Contamination Exclusion	pollcont.exc(F1 2/95)
Ordinance or Law Coverage	CP04050402
Minimum Earned Premium	minearned.pre(F1 2/9
Illinois Changes	IL01180399
Exclusion of Certified Acts and Other Acts of Terrorism; Coverage for Certain Fire Losses	IL09561102
Illinois Changes - Cancellation & Nonrenewal	IL02841000
Building & Personal Property Form	CP00100402
In Witness Endorsement	IL MP 9104 0906
Notice to Policy Holders-XL	PNCW030505
Supplemental Declarations	CF 150
Service of Process	IHIC-SOP-C
Disclosure Pursuant to Terrorism Risk	IL09850103
Notice to Policy Holders - Potential Restrictions of Terrorism(Exclusion)	PN811106TR-
Conditional Exclusion of Terrorism (Relating to Disposition of Federal Terrorism Risk Insurance Act)	IL09950107

**MORTGAGEE / ADDITIONAL INTERESTS**

Named Insured: 2930 N. Sheridan, LLC & 3033 N. Sheridan, LLC  
Policy Effective Date: 04/13/2007  
Policy Expiration Date: 04/13/2008

This endorsement effective: 12:01 AM 04/13/2007 forms a part of

Policy No: FCI 004 3213

<b>Interest Type(s)</b>	<b>Interest</b>
Mortgagee	<b>MW Housing Partners III, L.P.</b> 1501 E. Woodfield Road, #113E Schaumburg, IL 60173 <b>As respects:</b> Loc# 1 Bldg# 1 Loc# 2 Bldg# 1

Named Insured: 2930 N. Sheridan, LLC & 3033 N. Sheridan, LLC

Policy Effective Date: 4/13/07

Policy Expiration Date: 4/13/08

This endorsement effective: 4/13/07 forms a part of  
Policy No: FCI 004 3213 issued on behalf of: Indian Harbor Insurance Company

**SUB-LIMIT(s) OF LIABILITY**

\$1,000,000 Blanket Building Ordinance Coverage A,B & C

All other terms and conditions of this policy remain unchanged.



COMMERCIAL PROPERTY  
CP 00 10 04 02

## BUILDING AND PERSONAL PROPERTY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section H. – **Definitions**.

### A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

#### 1. Covered Property

Covered Property, as used in this Coverage Part, means the type of property described in this Section, A.1., and limited in A.2., Property Not Covered, if a Limit of Insurance is shown in the Declarations for that type of property.

a. **Building**, meaning the building or structure described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
  - (a) Machinery and
  - (b) Equipment;
- (4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:
  - (a) Fire extinguishing equipment;
  - (b) Outdoor furniture;
  - (c) Floor coverings; and
  - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;
- (5) If not covered by other insurance:
  - (a) Additions under construction, alterations and repairs to the building or structure;

- (b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure.

b. **Your Business Personal Property** located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises, consisting of the following unless otherwise specified in the Declarations or on the Your Business Personal Property – Separation of Coverage form:

- (1) Furniture and fixtures;
- (2) Machinery and equipment;
- (3) "Stock";
- (4) All other personal property owned by you and used in your business;
- (5) Labor, materials or services furnished or arranged by you on personal property of others;
- (6) Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
  - (a) Made a part of the building or structure you occupy but do not own; and
  - (b) You acquired or made at your expense but cannot legally remove;
- (7) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property of Others.

**c. Personal Property Of Others** that is:

- (1) In your care, custody or control; and
- (2) Located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

However, our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

**2. Property Not Covered**

Covered Property does not include:

- a. Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;
- b. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;
- c. Automobiles held for sale;
- d. Bridges, roadways, walks, patios or other paved surfaces;
- e. Contraband, or property in the course of illegal transportation or trade;
- f. The cost of excavations, grading, backfilling or filling;
- g. Foundations of buildings, structures, machinery or boilers if their foundations are below:
  - (1) The lowest basement floor; or
  - (2) The surface of the ground, if there is no basement;
- h. Land (including land on which the property is located), water, growing crops or lawns;
- i. Personal property while airborne or waterborne;
- j. Bulkheads, pilings, piers, wharves or docks;
- k. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;
- l. Retaining walls that are not part of a building;
- m. Underground pipes, flues or drains;

n. Electronic data, except as provided under Additional Coverages – Electronic Data. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This Paragraph n., does not apply to your "stock" of prepackaged software.

- o. The cost to replace or restore the information on valuable papers and records, including those which exist as electronic data. Valuable papers and records include but are not limited to proprietary information, books of account, deeds, manuscripts, abstracts, drawings and card index systems. Refer to the Coverage Extension for Valuable Papers And Records (Other Than Electronic Data) for limited coverage for valuable papers and records other than those which exist as electronic data.
- p. Vehicles or self-propelled machines (including aircraft or watercraft) that:
  - (1) Are licensed for use on public roads; or
  - (2) Are operated principally away from the described premises.

This paragraph does not apply to:

- (a) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;
- (b) Vehicles or self-propelled machines, other than autos, you hold for sale;
- (c) Rowboats or canoes out of water at the described premises; or
- (d) Trailers, but only to the extent provided for in the Coverage Extension for Non-Owned Detached Trailers.

q. The following property while outside of buildings:

- (1) Grain, hay, straw or other crops;
- (2) Fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, signs (other than signs attached to buildings), trees, shrubs or plants (other than "stock" of trees, shrubs or plants), all except as provided in the Coverage Extensions.

### 3. Covered Causes Of Loss

See applicable Causes of Loss Form as shown in the Declarations.

### 4. Additional Coverages

#### a. Debris Removal

- (1) Subject to Paragraphs (3) and (4), we will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) Debris Removal does not apply to costs to:
  - (a) Extract "pollutants" from land or water; or
  - (b) Remove, restore or replace polluted land or water.
- (3) Subject to the exceptions in Paragraph (4), the following provisions apply:
  - (a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.
  - (b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.
- (4) We will pay up to an additional \$10,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:

(a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.

(b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

Therefore, if (4)(a) and/or (4)(b) apply, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$10,000.

#### (5) Examples

The following examples assume that there is no coinsurance penalty.

#### Example #1

Limit of Insurance	\$ 90,000
Amount of Deductible	\$ 500
Amount of Loss	\$ 50,000
Amount of Loss Payable	\$ 49,500
	(\$50,000 - \$500)
Debris Removal Expense	\$ 10,000
Debris Removal Expense Payable	\$ 10,000
(\$10,000 is 20% of \$50,000)	

The debris removal expense is less than 25% of the sum of the loss payable plus the deductible. The sum of the loss payable and the debris removal expense (\$49,500 + \$10,000 = \$59,500) is less than the Limit of Insurance. Therefore the full amount of debris removal expense is payable in accordance with the terms of Paragraph (3).

**Example #2**

Limit of Insurance	\$ 90,000
Amount of Deductible	\$ 500
Amount of Loss	\$ 80,000
Amount of Loss Payable	\$ 79,500
	(\$80,000 - \$500)
Debris Removal Expense	\$ 30,000
Debris Removal Expense Payable	
Basic Amount	\$ 10,500
Additional Amount	\$ 10,000

The basic amount payable for debris removal expense under the terms of Paragraph (3) is calculated as follows: \$80,000 (\$79,500 + \$500) x .25 = \$20,000; capped at \$10,500. The cap applies because the sum of the loss payable (\$79,500) and the basic amount payable for debris removal expense (\$10,500) cannot exceed the Limit of Insurance (\$90,000).

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense (\$30,000) exceeds 25% of the loss payable plus the deductible (\$30,000 is 37.5% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$30,000 = \$109,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$10,000, the maximum payable under Paragraph (4). Thus the total payable for debris removal expense in this example is \$20,500; \$9,500 of the debris removal expense is not covered.

**b. Preservation Of Property**

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss or damage to that property:

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the loss or damage occurs within 30 days after the property is first moved.

**c. Fire Department Service Charge**

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000 for your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

No Deductible applies to this Additional Coverage.

**d. Pollutant Clean Up And Removal**

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay under this Additional Coverage for each described premises is \$10,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this policy.

**e. Increased Cost Of Construction**

- (1) This Additional Coverage applies only to buildings to which the Replacement Cost Optional Coverage applies.
- (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with enforcement of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in e.(3) through e.(9) of this Additional Coverage.

- (3) The ordinance or law referred to in e.(2) of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises, and is in force at the time of loss.
  - (4) Under this Additional Coverage, we will not pay any costs due to an ordinance or law that:
    - (a) You were required to comply with before the loss, even when the building was undamaged; and
    - (b) You failed to comply with.
  - (5) Under this Additional Coverage, we will not pay for:
    - (a) The enforcement of any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or
    - (b) Any costs associated with the enforcement of an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.
  - (6) The most we will pay under this Additional Coverage, for each described building insured under this Coverage Form, is \$10,000 or 5% of the Limit of Insurance applicable to that building, whichever is less. If a damaged building is covered under a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay under this Additional Coverage, for that damaged building, is the lesser of: \$10,000 or 5% times the value of the damaged building as of the time of loss times the applicable coinsurance percentage.  
The amount payable under this Additional Coverage is additional insurance.
  - (7) With respect to this Additional Coverage:
    - (a) We will not pay for the Increased Cost of Construction:
      - (i) Until the property is actually repaired or replaced, at the same or another premises; and
      - (ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.
    - (b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e.(6) of this Additional Coverage, is the increased cost of construction at the same premises.
    - (c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e.(6) of this Additional Coverage, is the increased cost of construction at the new premises.
  - (8) This Additional Coverage is not subject to the terms of the Ordinance or Law Exclusion, to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.
  - (9) The costs addressed in the Loss Payment and Valuation Conditions, and the Replacement Cost Optional Coverage, in this Coverage Form, do not include the increased cost attributable to enforcement of an ordinance or law. The amount payable under this Additional Coverage, as stated in e.(6) of this Additional Coverage, is not subject to such limitation.
- f. Electronic Data**
- (1) Under this Additional Coverage, electronic data has the meaning described under Property Not Covered – Electronic Data.
  - (2) Subject to the provisions of this Additional Coverage, we will pay for the cost to replace or restore electronic data which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that electronic data is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the electronic data was stored, with blank media of substantially identical type.
  - (3) The Covered Causes of Loss applicable to Your Business Personal Property apply to this Additional Coverage – Electronic Data, subject to the following:



- (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage – Electronic Data is limited to the "specified causes of loss" as defined in that form, and Collapse as set forth in that form.
  - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage – Electronic Data includes Collapse as set forth in that form.
  - (c) If the Causes Of Loss Form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage – Electronic Data.
  - (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system.
- (4) The most we will pay under this Additional Coverage – Electronic Data is \$2,500 for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in but not after that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

## 5. Coverage Extensions

Except as otherwise provided, the following Extensions apply to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

If a Coinsurance percentage of 80% or more or, a Value Reporting period symbol, is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

### a. Newly Acquired Or Constructed Property

#### (1) Buildings

If this policy covers Building, you may extend that insurance to apply to:

- (a) Your new buildings while being built on the described premises; and
- (b) Buildings you acquire at locations, other than the described premises, intended for:
  - (i) Similar use as the building described in the Declarations; or
  - (ii) Use as a warehouse.

The most we will pay for loss or damage under this Extension is \$250,000 at each building.

#### (2) Your Business Personal Property

- (a) If this policy covers Your Business Personal Property, you may extend that insurance to apply to:
  - (i) Business personal property, including such property that you newly acquire, at any location you acquire other than at fairs, trade shows or exhibitions;
  - (ii) Business personal property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations; or
  - (iii) Business personal property that you newly acquire, located at the described premises.

The most we will pay for loss or damage under this Extension is \$100,000 at each building.

#### (b) This Extension does not apply to:

- (i) Personal property of others that is temporarily in your possession in the course of installing or performing work on such property; or

- (ii) Personal property of others that is temporarily in your possession in the course of your manufacturing or wholesaling activities.

**(3) Period Of Coverage**

With respect to insurance on or at each newly acquired or constructed property, coverage will end when any of the following first occurs:

- (a) This policy expires;
- (b) 30 days expire after you acquire the property or begin construction of that part of the building that would qualify as covered property; or
- (c) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property or begin construction of that part of the building that would qualify as covered property.

**b. Personal Effects And Property Of Others**

You may extend the insurance that applies to Your Business Personal Property to apply to:

- (1) Personal effects owned by you, your officers, your partners or members, your managers or your employees. This extension does not apply to loss or damage by theft.
- (2) Personal property of others in your care, custody or control.

The most we will pay for loss or damage under this Extension is \$2,500 at each described premises. Our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

**c. Valuable Papers And Records (Other Than Electronic Data)**

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to the cost to replace or restore the lost information on valuable papers and records for which duplicates do not exist. But this Extension does not apply to valuable papers and records which exist as electronic data. Electronic data has the meaning described under Property Not Covered – Electronic Data.
- (2) If the Causes Of Loss – Special Form applies, coverage under this Extension is limited to the "specified causes of loss" as defined in that form, and Collapse as set forth in that form.
- (3) If the Causes Of Loss – Broad Form applies, coverage under this Extension includes Collapse as set forth in that form.
- (4) Under this Extension, the most we will pay to replace or restore the lost information is \$2,500 at each described premises, unless a higher limit is shown in the Declarations. Such amount is additional insurance. We will also pay for the cost of blank material for reproducing the records (whether or not duplicates exist), and (when there is a duplicate) for the cost of labor to transcribe or copy the records. The costs of blank material and labor are subject to the applicable Limit of Insurance on Your Business Personal Property and therefore coverage of such costs is not additional insurance.

**d. Property Off-Premises**

- (1) You may extend the insurance provided by this Coverage Form to apply to your Covered Property while it is away from the described premises, if it is:
  - (a) Temporarily at a location you do not own, lease or operate;
  - (b) In storage at a location you lease, provided the lease was executed after the beginning of the current policy term; or
  - (c) At any fair, trade show or exhibition.
- (2) This Extension does not apply to property:
  - (a) In or on a vehicle; or

- (b) In the care, custody or control of your salespersons, unless the property is in such care, custody or control at a fair, trade show or exhibition.

- (3) The most we will pay for loss or damage under this Extension is \$10,000.

**e. Outdoor Property**

You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, radio and television antennas (including satellite dishes), signs (other than signs attached to buildings), trees, shrubs and plants (other than "stock" of trees, shrubs or plants), including debris removal expense, caused by or resulting from any of the following causes of loss if they are Covered Causes of Loss:

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Riot or Civil Commotion; or
- (5) Aircraft.

The most we will pay for loss or damage under this Extension is \$1,000, but not more than \$250 for any one tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence.

**f. Non-Owned Detached Trailers**

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to loss or damage to trailers that you do not own, provided that:
  - (a) The trailer is used in your business;
  - (b) The trailer is in your care, custody or control at the premises described in the Declarations; and
  - (c) You have a contractual responsibility to pay for loss or damage to the trailer.
- (2) We will not pay for any loss or damage that occurs:
  - (a) While the trailer is attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion;

- (b) During hitching or unhitching operations, or when a trailer becomes accidentally unhitched from a motor vehicle or motorized conveyance.

- (3) The most we will pay for loss or damage under this Extension is \$5,000, unless a higher limit is shown in the Declarations.

- (4) This insurance is excess over the amount due (whether you can collect on it or not) from any other insurance covering such property.

Each of these Extensions is additional insurance unless otherwise indicated. The Additional Condition, Coinsurance, does not apply to these Extensions.

**B. Exclusions And Limitations**

See applicable Causes of Loss Form as shown in the Declarations.

**C. Limits Of Insurance**

The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

The most we will pay for loss or damage to outdoor signs attached to buildings is \$1,000 per sign in any one occurrence.

The limits applicable to the Fire Department Service Charge and Pollutant Clean Up and Removal Additional Coverages are in addition to the Limits of Insurance.

Payments under the Preservation of Property Additional Coverage will not increase the applicable Limit of Insurance.

**D. Deductible**

In any one occurrence of loss or damage (hereinafter referred to as loss), we will first reduce the amount of loss if required by the Coinsurance Condition or the Agreed Value Optional Coverage. If the adjusted amount of loss is less than or equal to the Deductible, we will not pay for that loss. If the adjusted amount of loss exceeds the Deductible, we will then subtract the Deductible from the adjusted amount of loss, and will pay the resulting amount or the Limit of Insurance, whichever is less.

When the occurrence involves loss to more than one item of Covered Property and separate Limits of Insurance apply, the losses will not be combined in determining application of the Deductible. But the Deductible will be applied only once per occurrence.



**Example No. 1:**

(This example assumes there is no coinsurance penalty.)

Deductible:	\$ 250
Limit of Insurance – Bldg. 1:	\$ 60,000
Limit of Insurance – Bldg. 2:	\$ 80,000
Loss to Bldg. 1:	\$ 60,100
Loss to Bldg. 2:	\$ 90,000

The amount of loss to Bldg. 1 (\$60,100) is less than the sum (\$60,250) of the Limit of Insurance applicable to Bldg. 1 plus the Deductible.

The Deductible will be subtracted from the amount of loss in calculating the loss payable for Bldg. 1:

\$ 60,100
– 250
<u>\$ 59,850</u> Loss Payable – Bldg. 1

The Deductible applies once per occurrence and therefore is not subtracted in determining the amount of loss payable for Bldg. 2. Loss payable for Bldg. 2 is the Limit of Insurance of \$80,000.

Total amount of loss payable: \$59,850 + 80,000 = \$139,850

**Example No. 2:**

(This example, too, assumes there is no coinsurance penalty.)

The Deductible and Limits of Insurance are the same as those in Example No. 1.

Loss to Bldg. 1:	\$ 70,000
(exceeds Limit of Insurance plus Deductible)	
Loss to Bldg. 2:	\$ 90,000
(exceeds Limit of Insurance plus Deductible)	
Loss Payable – Bldg. 1:	\$60,000
(Limit of Insurance)	
Loss Payable – Bldg. 2:	\$80,000
(Limit of Insurance)	
Total amount of loss payable:	\$140,000

**E. Loss Conditions**

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

**1. Abandonment**

There can be no abandonment of any property to us.

**2. Appraisal**

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

**3. Duties In The Event Of Loss Or Damage**

- a. You must see that the following are done in the event of loss or damage to Covered Property:

- (1) Notify the police if a law may have been broken.
- (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
- (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
- (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

- (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- (8) Cooperate with us in the investigation or settlement of the claim.
- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

#### 4. Loss Payment

- a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:
  - (1) Pay the value of lost or damaged property;
  - (2) Pay the cost of repairing or replacing the lost or damaged property, subject to b. below;
  - (3) Take all or any part of the property at an agreed or appraised value; or
  - (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to b. below.

We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.

- b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.
- c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- d. We will not pay you more than your financial interest in the Covered Property.

- e. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part and:
  - (1) We have reached agreement with you on the amount of loss; or
  - (2) An appraisal award has been made.

#### 5. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

#### 6. Vacancy

##### a. Description Of Terms

- (1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in (1)(a) and (1)(b) below:
  - (a) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.
  - (b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:
    - (i) Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or
    - (ii) Used by the building owner to conduct customary operations.

- (2) Buildings under construction or renovation are not considered vacant.

**b. Vacancy Provisions**

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

- (1) We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:
  - (a) Vandalism;
  - (b) Sprinkler leakage, unless you have protected the system against freezing;
  - (c) Building glass breakage;
  - (d) Water damage;
  - (e) Theft; or
  - (f) Attempted theft.
- (2) With respect to Covered Causes of Loss other than those listed in b.(1)(a) through b.(1)(f) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

**7. Valuation**

We will determine the value of Covered Property in the event of loss or damage as follows:

- a. At actual cash value as of the time of loss or damage, except as provided in b., c., d. and e. below.
- b. If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement.

The cost of building repairs or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property. However, the following property will be valued at the actual cash value even when attached to the building:

- (1) Awnings or floor coverings;
  - (2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or
  - (3) Outdoor equipment or furniture.
- c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.

- d. Glass at the cost of replacement with safety glazing material if required by law.

**e. Tenant's Improvements and Betterments at:**

- (1) Actual cash value of the lost or damaged property if you make repairs promptly.
- (2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
  - (a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
  - (b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease.

If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.

- (3) Nothing if others pay for repairs or replacement.

**F. Additional Conditions**

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

**1. Coinsurance**

If a Coinsurance percentage is shown in the Declarations, the following condition applies.

- a. We will not pay the full amount of any loss if the value of Covered Property at the time of loss times the Coinsurance percentage shown for it in the Declarations is greater than the Limit of Insurance for the property.

Instead, we will determine the most we will pay using the following steps:

- (1) Multiply the value of Covered Property at the time of loss by the Coinsurance percentage;
- (2) Divide the Limit of Insurance of the property by the figure determined in Step (1);

(3) Multiply the total amount of loss, before the application of any deductible, by the figure determined in Step (2); and

(4) Subtract the deductible from the figure determined in Step (3).

We will pay the amount determined in Step (4) or the limit of insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

**Example No. 1 (Underinsurance):**

When: The value of the property is \$ 250,000  
 The Coinsurance percentage for it is 80%  
 The Limit of Insurance for it is \$ 100,000  
 The Deductible is \$ 250  
 The amount of loss is \$ 40,000

Step (1):  $\$250,000 \times 80\% = \$200,000$   
 (the minimum amount of insurance to meet your Coinsurance requirements)

Step (2):  $\$100,000 \div \$200,000 = .50$

Step (3):  $\$40,000 \times .50 = \$20,000$

Step (4):  $\$20,000 - \$250 = \$19,750$

We will pay no more than \$19,750. The remaining \$20,250 is not covered.

**Example No. 2 (Adequate Insurance):**

When: The value of the property is \$ 250,000  
 The Coinsurance percentage for it is 80%  
 The Limit of Insurance for it is \$ 200,000  
 The Deductible is \$ 250  
 The amount of loss is \$ 40,000

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 ( $\$250,000 \times 80\%$ ). Therefore, the Limit of Insurance in this Example is adequate and no penalty applies. We will pay no more than \$39,750 (\$40,000 amount of loss minus the deductible of \$250).

- b. If one Limit of Insurance applies to two or more separate items, this condition will apply to the total of all property to which the limit applies.

**Example No. 3:**

When: The value of property is:  
 Bldg. at Location No. 1 \$ 75,000  
 Bldg. at Location No. 2 \$ 100,000  
 Personal Property at Location No. 2 \$ 75,000  
 \$ 250,000

The Coinsurance percentage for it is 90%

The Limit of Insurance for Buildings and Personal Property at Location Nos. 1 and 2 is \$ 180,000  
 The Deductible is \$ 1,000  
 The amount of loss is:  
 Bldg. at Location No. 2 \$ 30,000  
 Personal Property at Location No. 2. \$ 20,000  
 \$ 50,000

Step (1):  $\$250,000 \times 90\% = \$225,000$   
 (the minimum amount of insurance to meet your Coinsurance requirements and to avoid the penalty shown below)

Step (2):  $\$180,000 \div \$225,000 = .80$

Step (3):  $\$50,000 \times .80 = \$40,000$

Step (4):  $\$40,000 - \$1,000 = \$39,000$

We will pay no more than \$39,000. The remaining \$11,000 is not covered.

**2. Mortgageholders**

- The term mortgageholder includes trustee.
- We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
  - Pays any premium due under this Coverage Part at our request if you have failed to do so;
  - Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and

- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All of the terms of this Coverage Part will then apply directly to the mortgageholder.

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:

(1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and

(2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If we cancel this policy, we will give written notice to the mortgageholder at least:

(1) 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or

(2) 30 days before the effective date of cancellation if we cancel for any other reason.

- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

## G. Optional Coverages

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item.

### 1. Agreed Value

- a. The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies. We will pay no more for loss of or damage to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Agreed Value shown for it in the Declarations.

- b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage expires.

- c. The terms of this Optional Coverage apply only to loss or damage that occurs:

(1) On or after the effective date of this Optional Coverage; and

(2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

### 2. Inflation Guard

- a. The Limit of Insurance for property to which this Optional Coverage applied will automatically increase by the annual percentage shown in the Declarations.

- b. The amount of increase will be:

(1) The Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Limit of Insurance, times

(2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times

(3) The number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Limit of Insurance, divided by 365.

#### Example:

If:	The applicable Limit of Insurance is	\$ 100,000
	The annual percentage increase is	8%
	The number of days since the beginning of the policy year (or last policy change) is	146
	The amount of increase is $\$100,000 \times .08 \times 146$	
	$\div 365 =$	\$ 3,200

### 3. Replacement Cost

- a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Loss Condition, Valuation, of this Coverage Form.

- b. This Optional Coverage does not apply to:

(1) Personal property of others;

(2) Contents of a residence;



(3) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac; or

(4) "Stock", unless the Including "Stock" option is shown in the Declarations.

Under the terms of this Replacement Cost Optional Coverage, tenants' improvements and betterments are not considered to be the personal property of others.

c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.

d. We will not pay on a replacement cost basis for any loss or damage:

(1) Until the lost or damaged property is actually repaired or replaced; and

(2) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

With respect to tenants' improvements and betterments, the following also apply:

(3) If the conditions in d.(1) and d.(2) above are not met, the value of tenants' improvements and betterments will be determined as a proportion of your original cost, as set forth in the Valuation Condition of this Coverage Form; and

(4) We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.

e. We will not pay more for loss or damage on a replacement cost basis than the least of (1), (2) or (3), subject to f. below:

(1) The Limit of Insurance applicable to the lost or damaged property;

(2) The cost to replace the lost or damaged property with other property:

(a) Of comparable material and quality; and

(b) Used for the same purpose; or

(3) The amount actually spent that is necessary to repair or replace the lost or damaged property.

If a building is rebuilt at a new premises, the cost described in e.(2) above is limited to the cost which would have been incurred if the building had been rebuilt at the original premises.

f. The cost of repair or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

#### 4. Extension Of Replacement Cost To Personal Property Of Others

a. If the Replacement Cost Optional Coverage is shown as applicable in the Declarations, then this Extension may also be shown as applicable. If the Declarations show this Extension as applicable, then Paragraph 3.b.(1) of the Replacement Cost Optional Coverage is deleted and all other provisions of the Replacement Cost Optional Coverage apply to replacement cost on personal property of others.

b. With respect to replacement cost on the personal property of others, the following limitation applies:

If an item(s) of personal property of others is subject to a written contract which governs your liability for loss or damage to that item(s), then valuation of that item(s) will be based on the amount for which you are liable under such contract, but not to exceed the lesser of the replacement cost of the property or the applicable Limit of Insurance.

#### H. Definitions

1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.

2. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

3. "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.

COMMERCIAL PROPERTY  
CP 00 32 04 02**BUSINESS INCOME (WITHOUT EXTRA EXPENSE)  
COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section G. – **Definitions**.

**A. Coverage****1. Business Income**

Business Income means the:

- a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
- b. Continuing normal operating expenses incurred, including payroll.

For manufacturing risks, Net Income includes the net sales value of production.

Coverage is provided as described and limited below for one or more of the following options for which a Limit of Insurance is shown in the Declarations:

- a. Business Income including "Rental Value".
- b. Business Income other than "Rental Value".
- c. "Rental Value".

If option a. above is selected, the term Business Income will include "Rental Value". If option c. above is selected, the term Business Income will mean "Rental Value" only.

If Limits of Insurance are shown under more than one of the above options, the provisions of this Coverage Part apply separately to each.

We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of the site at which the described premises are located.

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of the site at which the described premises are located, your premises means:

- a. The portion of the building which you rent, lease or occupy; and
- b. Any area within the building or on the site at which the described premises are located, if that area services, or is used to gain access to, the described premises.

**2. Covered Causes Of Loss, Exclusions And Limitations**

See applicable Causes of Loss Form as shown in the Declarations.

**3. Additional Limitation – Interruption Of Computer Operations**

- a. Coverage for Business Income does not apply when a "suspension" of "operations" is caused by destruction or corruption of electronic data, or any loss or damage to electronic data, except as provided under the Additional Coverage – Interruption Of Computer Operations.
- b. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.

**4. Additional Coverages****a. Expenses To Reduce Loss**

In the event of a covered loss of Business Income, we will pay necessary expenses you incur, except the cost of extinguishing a fire, to avoid further loss of Business Income. The total of our payment for Business Income loss and Expenses to Reduce Loss will not be more than the Business Income loss that would have been payable under this Coverage Form (after application of any Coinsurance penalty) if the Expenses to Reduce Loss had not been incurred. This coverage does not increase the Limit of Insurance.

The Coinsurance condition does not apply specifically to such Expenses to Reduce Loss, but it is used as described above to determine the total amount payable.

**b. Civil Authority**

We will pay for the actual loss of Business Income you sustain caused by action of civil authority that prohibits access to the described premises due to direct physical loss of or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss. This coverage begins 72 hours after the time of that action, and will apply for a period of up to three consecutive weeks from the date on which the coverage begins.

**c. Alterations And New Buildings**

We will pay for the actual loss of Business Income you sustain due to direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss to:

- (1) New buildings or structures, whether complete or under construction;
- (2) Alterations or additions to existing buildings or structures; and
- (3) Machinery, equipment, supplies or building materials located on or within 100 feet of the described premises and:
  - (a) Used in the construction, alterations or additions; or
  - (b) Incidental to the occupancy of new buildings.

If such direct physical loss or damage delays the start of "operations", the "period of restoration" will begin on the date "operations" would have begun if the direct physical loss or damage had not occurred.

**d. Extended Business Income****(1) Business Income Other Than "Rental Value"**

If the necessary "suspension" of your "operations" produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:

- (a) Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and
- (b) Ends on the earlier of:
  - (i) The date you could restore your "operations", with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damage had occurred; or
  - (ii) 30 consecutive days after the date determined in (1)(a) above.

However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

**(2) "Rental Value"**

If the necessary "suspension" of your "operations" produces a "Rental Value" loss payable under this policy, we will pay for the actual loss of "Rental Value" you incur during the period that:

- (a) Begins on the date property is actually repaired, rebuilt or replaced and tenantability is restored; and
- (b) Ends on the earlier of:
  - (i) The date you could restore tenant occupancy, with reasonable speed, to the level which would generate the "Rental Value" that would have existed if no direct physical loss or damage had occurred; or
  - (ii) 30 consecutive days after the date determined in (2)(a) above.



However, Extended Business Income does not apply to loss of "Rental Value" incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of "Rental Value" must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

**e. Interruption Of Computer Operations**

- (1) Under this Additional Coverage, electronic data has the meaning described under Additional Limitation – Interruption Of Computer Operations.
- (2) Subject to all provisions of this Additional Coverage, you may extend the insurance that applies to Business Income to apply to a "suspension" of "operations" caused by an interruption in computer operations due to destruction or corruption of electronic data due to a Covered Cause of Loss.
- (3) With respect to the coverage provided under this Additional Coverage, the Covered Causes of Loss are subject to the following:
  - (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage – Interruption Of Computer Operations is limited to the "specified causes of loss" as defined in that form, and Collapse as set forth in that form.
  - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage – Interruption Of Computer Operations includes Collapse as set forth in that form.
  - (c) If the Causes Of Loss Form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage – Interruption Of Computer Operations.
- (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for an interruption related to manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, maintain, repair or replace that system.
- (4) The most we will pay under this Additional Coverage – Interruption Of Computer Operations is \$2,500 for all loss sustained in any one policy year, regardless of the number of interruptions or the number of premises, locations or computer systems involved. If loss payment relating to the first interruption does not exhaust this amount, then the balance is available for loss sustained as a result of subsequent interruptions in that policy year. A balance remaining at the end of a policy year does not increase the amount of insurance in the next policy year. With respect to any interruption which begins in one policy year and continues or results in additional loss in a subsequent policy year(s), all loss is deemed to be sustained in the policy year in which the interruption began.
- (5) This Additional Coverage – Interruption in Computer Operations does not apply to loss sustained after the end of the "period of restoration", even if the amount of insurance stated in (4) above has not been exhausted.

**5. Coverage Extension**

If a Coinsurance percentage of 50% or more is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

**NEWLY ACQUIRED LOCATIONS**

- a. You may extend your Business Income Coverage to apply to property at any location you acquire other than fairs or exhibitions.
- b. The most we will pay for loss under this Extension is \$100,000 at each location.

- c. Insurance under this Extension for each newly acquired location will end when any of the following first occurs:

- (1) This policy expires;
- (2) 30 days expire after you acquire or begin to construct the property; or
- (3) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property.

This Extension is additional insurance. The Additional Condition, Coinsurance, does not apply to this Extension.

#### **B. Limits Of Insurance**

The most we will pay for loss in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

The limit applicable to the Coverage Extension is in addition to the Limit of Insurance.

Payments under the following Additional Coverages will not increase the applicable Limit of Insurance:

1. Alterations and New Buildings;
2. Civil Authority;
3. Extended Business Income;
4. Expenses to Reduce Loss.

#### **C. Loss Conditions**

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

##### **1. Appraisal**

If we and you disagree on the amount of Net Income and operating expense or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser.

The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and operating expense or amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

#### **2. Duties In The Event Of Loss**

- a. You must see that the following are done in the event of loss:

- (1) Notify the police if a law may have been broken.
- (2) Give us prompt notice of the direct physical loss or damage. Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when, and where the direct physical loss or damage occurred.
- (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- (5) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

- (6) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
  - (7) Cooperate with us in the investigation or settlement of the claim.
  - (8) If you intend to continue your business, you must resume all or part of your "operations" as quickly as possible.
- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

**3. Loss Determination**

a. The amount of Business Income loss will be determined based on:

- (1) The Net Income of the business before the direct physical loss or damage occurred;
- (2) The likely Net Income of the business if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;
- (3) The operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct physical loss or damage; and
- (4) Other relevant sources of information, including:
  - (a) Your financial records and accounting procedures;
  - (b) Bills, invoices and other vouchers; and
  - (c) Deeds, liens or contracts.

**b. Resumption Of Operations**

We will reduce the amount of your Business Income loss to the extent you can resume your "operations", in whole or in part, by using damaged or undamaged property (including merchandise or stock) at the described premises or elsewhere.

- c. If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.

**4. Loss Payment**

We will pay for covered loss within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part and:

- a. We have reached agreement with you on the amount of loss; or
- b. An appraisal award has been made.

**D. Additional Condition****COINSURANCE**

If a Coinsurance percentage is shown in the Declarations, the following condition applies in addition to the Common Policy Conditions and the Commercial Property Conditions.

We will not pay the full amount of any loss if the Limit of Insurance for Business Income is less than:

- a. The Coinsurance percentage shown for Business Income in the Declarations; times
- b. The sum of:
  - (1) The Net Income (Net Profit or Loss before income taxes), and
  - (2) Operating expenses, including payroll expenses, that would have been earned or incurred (had no loss occurred) by your "operations" at the described premises for the 12 months following the inception, or last previous anniversary date, of this policy (whichever is later).

Instead, we will determine the most we will pay using the following steps:

1. Multiply the Net Income and operating expense for the 12 months following the inception, or last previous anniversary date, of this policy by the Coinsurance percentage;
2. Divide the Limit of Insurance for the described premises by the figure determined in Step 1; and
3. Multiply the total amount of loss by the figure determined in Step 2.

We will pay the amount determined in Step 3 or the limit of insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

In determining operating expenses for the purpose of applying the Coinsurance condition, the following expenses, if applicable, shall be deducted from the total of all operating expenses:

1. Prepaid freight – outgoing;
2. Returns and allowances;
3. Discounts;
4. Bad debts;
5. Collection expenses;
6. Cost of raw stock and factory supplies consumed (including transportation charges);
7. Cost of merchandise sold (including transportation charges);
8. Cost of other supplies consumed (including transportation charges);
9. Cost of services purchased from outsiders (not employees) to resell, that do not continue under contract;

10. Power, heat and refrigeration expenses that do not continue under contract (if Form CP 15 11 is attached);
11. All ordinary payroll expenses or the amount of payroll expense excluded (if Form CP 15 10 is attached); and
12. Special deductions for mining properties (royalties unless specifically included in coverage; actual depletion commonly known as unit or cost depletion – not percentage depletion; welfare and retirement fund charges based on tonnage; hired trucks).

**Example No. 1 (Underinsurance):**

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been \$400,000

The Coinsurance percentage is 50%

The Limit of Insurance is \$150,000

The amount of loss is \$ 80,000

Step 1:  $\$400,000 \times 50\% = \$200,000$  (the minimum amount of insurance to meet your Coinsurance requirements)

Step 2:  $\$150,000 \div \$200,000 = .75$

Step 3:  $\$80,000 \times .75 = \$60,000$

We will pay no more than \$60,000. The remaining \$20,000 is not covered.

**Example No. 2 (Adequate Insurance):**

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been \$400,000

The Coinsurance percentage is 50%

The Limit of Insurance is \$200,000

The amount of loss is \$ 80,000

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 (\$400,000 x 50%). Therefore, the Limit of Insurance in this Example is adequate and no penalty applies. We will pay no more than \$80,000 (amount of loss).

**E. Optional Coverages**

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item.

**1. Maximum Period Of Indemnity**

- a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.
- b. The most we will pay for loss of Business Income is the lesser of:
  - (1) The amount of loss sustained during the 120 days immediately following the beginning of the "period of restoration"; or
  - (2) The Limit of Insurance shown in the Declarations.

**2. Monthly Limit Of Indemnity**

- a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.
- b. The most we will pay for loss of Business Income in each period of 30 consecutive days after the beginning of the "period of restoration" is:
  - (1) The Limit of Insurance, multiplied by
  - (2) The fraction shown in the Declarations for this Optional Coverage.

**Example**

When: The Limit of Insurance is \$120,000  
The fraction shown in the Declarations for this Optional Coverage is 1/4

The most we will pay for loss in each period of 30 consecutive days is:

$\$120,000 \times 1/4 = \$30,000$

If, in this example, the actual amount of loss is:

Days 1-30	\$40,000
Days 31-60	20,000
Days 61-90	<u>30,000</u>
	\$90,000

We will pay:

Days 1-30	\$30,000
Days 31-60	20,000
Days 61-90	<u>30,000</u>
	\$80,000

The remaining \$10,000 is not covered.

**3. Business Income Agreed Value**

- a. To activate this Optional Coverage:
  - (1) A Business Income Report/Work Sheet must be submitted to us and must show financial data for your "operations".

- (a) During the 12 months prior to the date of the Work Sheet; and
  - (b) Estimated for the 12 months immediately following the inception of this Optional Coverage.
- (2) The Declarations must indicate that the Business Income Agreed Value Optional Coverage applies, and an Agreed Value must be shown in the Declarations. The Agreed Value should be at least equal to:
- (a) The Coinsurance percentage shown in the Declarations; multiplied by
  - (b) The amount of Net Income and operating expenses for the following 12 months you report on the Work Sheet.
- b. The Additional Condition, Coinsurance, is suspended until:
- (1) 12 months after the effective date of this Optional Coverage; or
  - (2) The expiration date of this policy; whichever occurs first.
- c. We will reinstate the Additional Condition, Coinsurance, automatically if you do not submit a new Work Sheet and Agreed Value:
- (1) Within 12 months of the effective date of this Optional Coverage; or
  - (2) When you request a change in your Business Income Limit of Insurance.
- d. If the Business Income Limit of Insurance is less than the Agreed Value, we will not pay more of any loss than the amount of loss multiplied by:
- (1) The Business Income Limit of Insurance; divided by
  - (2) The Agreed Value.

#### Example

When:      The Limit of Insurance is      \$100,000  
               The Agreed Value is            \$200,000  
               The amount of loss is           \$80,000

Step (a):    $\$100,000 \div \$200,000 = .50$

Step (b):    $.50 \times \$80,000 = \$40,000$

We will pay \$40,000. The remaining \$40,000 is not covered.

#### 4. Extended Period Of Indemnity

Under Paragraph A.4.d., **Extended Business Income**, the number "30" in Subparagraphs (1)(b) and (2)(b) is replaced by the number shown in the Declarations for this Optional Coverage.

#### F. Definitions

1. "Finished Stock" means stock you have manufactured.

"Finished stock" also includes whiskey and alcoholic products being aged, unless there is a Coinsurance percentage shown for Business Income in the Declarations.

"Finished stock" does not include stock you have manufactured that is held for sale on the premises of any retail outlet insured under this Coverage Part.

2. "Operations" means:

- a. Your business activities occurring at the described premises; and
- b. The tenantability of the described premises, if coverage for Business Income including "Rental Value" or "Rental Value" applies.

3. "Period of Restoration" means the period of time that:

- a. Begins 72 hours after the time of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the described premises; and

- b. Ends on the earlier of:

- (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or

- (2) The date when business is resumed at a new permanent location.

"Period of restoration" does not include any increased period required due to the enforcement of any ordinance or law that:

- (1) Regulates the construction, use or repair, or required the tearing down of any property; or

- (2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

The expiration date of this policy will not cut short the "period of restoration".



4. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
5. "Rental Value" means Business Income that consists of:
  - a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred as rental income from tenant occupancy of the premises described in the Declarations as furnished and equipped by you, including fair rental value of any portion of the described premises which is occupied by you; and
  - b. Continuing normal operating expenses incurred in connection with that premises, including:
    - (1) Payroll; and
    - (2) The amount of charges which are the legal obligation of the tenant(s) but would otherwise be your obligations.
6. "Suspension" means:
  - a. The slowdown or cessation of your business activities; or
  - b. That a part or all of the described premises is rendered untenable, if coverage for Business Income including "Rental Value" or "Rental Value" applies.

COMMERCIAL PROPERTY  
CP 10 30 04 02

## CAUSES OF LOSS – SPECIAL FORM

Words and phrases that appear in quotation marks have special meaning. Refer to Section F. – Definitions.

### A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means Risks Of Direct Physical Loss unless the loss is:

1. Excluded in Section B., Exclusions; or
  2. Limited in Section C., Limitations;
- that follow.

### B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

#### a. Ordinance Or Law

The enforcement of any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance Or Law, applies whether the loss results from:

- (1) An ordinance or law that is enforced even if the property has not been damaged; or
- (2) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

#### b. Earth Movement

- (1) Earthquake, including any earth sinking, rising or shifting related to such event;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;

- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in b.(1) through (4) above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

- (5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or Volcanic Action, we will pay for the loss or damage caused by that fire, building glass breakage or Volcanic Action.

Volcanic action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust or particulate matter; or
- (c) Lava flow.

All volcanic eruptions that occur within any 168 hour period will constitute a single occurrence.

Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

#### c. Governmental Action

Seizure or destruction of property by order of governmental authority.

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Part.



**d. Nuclear Hazard**

Nuclear reaction or radiation, or radioactive contamination, however caused.

But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

**e. Utility Services**

The failure of power or other utility service supplied to the described premises, however caused, if the failure occurs away from the described premises. Failure includes lack of sufficient capacity and reduction in supply.

But if the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion does not apply to the Business Income coverage or to Extra Expense coverage. Instead, the Special Exclusion in Paragraph B.4.a.(1) applies to these coverages.

**f. War And Military Action**

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**g. Water**

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Water that backs up or overflows from a sewer, drain or sump; or
- (4) Water under the ground surface pressing on, or flowing or seeping through:
  - (a) Foundations, walls, floors or paved surfaces;
  - (b) Basements, whether paved or not; or
  - (c) Doors, windows or other openings.

But if Water, as described in g.(1) through g.(4) above, results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage.

**h. "Fungus", Wet Rot, Dry Rot And Bacteria**

Presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria.

But if "fungus", wet or dry rot or bacteria results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion does not apply:

1. When "fungus", wet or dry rot or bacteria results from fire or lightning; or
2. To the extent that coverage is provided in the Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria with respect to loss or damage by a cause of loss other than fire or lightning.

Exclusions B.1.a. through B.1.h. apply whether or not the loss event results in widespread damage or affects a substantial area.

2. We will not pay for loss or damage caused by or resulting from any of the following:
  - a. Artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires.  
But if artificially generated electrical current results in fire, we will pay for the loss or damage caused by that fire.
  - b. Delay, loss of use or loss of market.
  - c. Smoke, vapor or gas from agricultural smudging or industrial operations.
  - d.(1) Wear and tear;
  - (2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
  - (3) Smog;
  - (4) Settling, cracking, shrinking or expansion;
  - (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

(6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.

(7) The following causes of loss to personal property:

(a) Dampness or dryness of atmosphere;

(b) Changes in or extremes of temperature; or

(c) Marring or scratching.

But if an excluded cause of loss that is listed in 2.d.(1) through (7) results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.

g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:

(1) You do your best to maintain heat in the building or structure; or

(2) You drain the equipment and shut off the supply if the heat is not maintained.

h. Dishonest or criminal act by you, any of your partners, members, officers, managers, employees (including leased employees), directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:

(1) Acting alone or in collusion with others; or

(2) Whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees (including leased employees); but theft by employees (including leased employees) is not covered.

i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

j. Rain, snow, ice or sleet to personal property in the open.

k. Collapse, except as provided below in the Additional Coverage for Collapse. But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss.

l. Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion, l., does not apply to damage to glass caused by chemicals applied to the glass.

m. Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.

3. We will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c. But if an excluded cause of loss that is listed in 3.a. through 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1. above to produce the loss or damage.

b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

c. Faulty, inadequate or defective:

- (1) Planning, zoning, development, surveying, siting;
- (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (3) Materials used in repair, construction, renovation or remodeling; or
- (4) Maintenance;  
of part or all of any property on or off the described premises.

**4. Special Exclusions**

The following provisions apply only to the specified Coverage Forms.

**a. Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, Or Extra Expense Coverage Form**

We will not pay for:

- (1) Any loss caused directly or indirectly by the failure of power or other utility service supplied to the described premises, however caused, if the failure occurs outside of a covered building. Failure includes lack of sufficient capacity and reduction in supply.  
But if the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss resulting from that Covered Cause of Loss.
- (2) Any loss caused by or resulting from:
  - (a) Damage or destruction of "finished stock"; or
  - (b) The time required to reproduce "finished stock".
 This exclusion does not apply to Extra Expense.
- (3) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.
- (4) Any increase of loss caused by or resulting from:
  - (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

- (b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.

- (5) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".
- (6) Any other consequential loss.

**b. Leasehold Interest Coverage Form**

- (1) Paragraph B.1.a. Ordinance Or Law, does not apply to insurance under this Coverage Form.
- (2) We will not pay for any loss caused by:
  - (a) Your cancelling the lease;
  - (b) The suspension, lapse or cancellation of any license; or
  - (c) Any other consequential loss.

**c. Legal Liability Coverage Form**

- (1) The following exclusions do not apply to insurance under this Coverage Form:
  - (a) Paragraph B.1.a., Ordinance Or Law;
  - (b) Paragraph B.1.c., Governmental Action;
  - (c) Paragraph B.1.d., Nuclear Hazard;
  - (d) Paragraph B.1.e., Utility Services; and
  - (e) Paragraph B.1.f., War And Military Action.

- (2) The following additional exclusions apply to insurance under this Coverage Form:

**(a) Contractual Liability**

We will not defend any claim or "suit", or pay damages that you are legally liable to pay, solely by reason of your assumption of liability in a contract or agreement. But this exclusion does not apply to a written lease agreement in which you have assumed liability for building damage resulting from an actual or attempted burglary or robbery, provided that:

- (i) Your assumption of liability was executed prior to the accident; and
- (ii) The building is Covered Property under this Coverage Form.

**(b) Nuclear Hazard**

We will not defend any claim or "suit", or pay any damages, loss, expense or obligation, resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

**C. Limitations**

The following limitations apply to all policy forms and endorsements, unless otherwise stated.

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.

- a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
- b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.

- c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

- (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
- (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.

- d. Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft.

However, this limitation does not apply to:

- (1) Building materials and supplies held for sale by you, unless they are insured under the Builders Risk Coverage Form; or
- (2) Business Income coverage or Extra Expense coverage.

- e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.

- f. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.

2. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:

- a. Animals, and then only if they are killed or their destruction is made necessary.
- b. Fragile articles such as statuary, marbles, chinaware and porcelains, if broken. This restriction does not apply to:
  - (1) Glass; or
  - (2) Containers of property held for sale.

- c. Builders' machinery, tools and equipment owned by you or entrusted to you, provided such property is Covered Property.

However, this limitation does not apply:

- (1) If the property is located on or within 100 feet of the described premises, unless the premises is insured under the Builders Risk Coverage Form; or
  - (2) To Business Income coverage or to Extra Expense coverage.
3. The special limit shown for each category, a. through d., is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are:
- a. \$2,500 for furs, fur garments and garments trimmed with fur.
  - b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
  - c. \$2,500 for patterns, dies, molds and forms.
  - d. \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.

These special limits are part of, not in addition to, the Limit of Insurance applicable to the Covered Property.

This limitation, C.3., does not apply to Business Income coverage or to Extra Expense coverage.

4. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage:
- a. Results in discharge of any substance from an automatic fire protection system; or
  - b. Is directly caused by freezing.

However, this limitation does not apply to Business Income coverage or to Extra Expense coverage.

#### **D. Additional Coverage – Collapse**

The term Covered Cause of Loss includes the Additional Coverage – Collapse as described and limited in D.1. through D.5. below.

##### **1. With respect to buildings:**

- a. Collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose;
- b. A building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse;
- c. A part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building;
- d. A building that is standing or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

##### **2. We will pay for direct physical loss or damage to Covered Property, caused by collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if the collapse is caused by one or more of the following:**

- a. The "specified causes of loss" or breakage of building glass, all only as insured against in this Coverage Part;
- b. Decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
- c. Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
- d. Weight of people or personal property;
- e. Weight of rain that collects on a roof;



MAGISTRATE JUDGE MASON

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- f. Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation. However, if the collapse occurs after construction, remodeling or renovation is complete and is caused in part by a cause of loss listed in 2.a. through 2.e., we will pay for the loss or damage even if use of defective material or methods, in construction, remodeling or renovation, contributes to the collapse.

The criteria set forth in 1.a. through 1.d. do not limit the coverage otherwise provided under this Causes of Loss Form for the causes of loss listed in 2.a., 2.d. and 2.e.

3. With respect to the following property:
- a. Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;
  - b. Awnings, gutters and downspouts;
  - c. Yard fixtures;
  - d. Outdoor swimming pools;
  - e. Fences;
  - f. Piers, wharves and docks;
  - g. Beach or diving platforms or appurtenances;
  - h. Retaining walls; and
  - i. Walks, roadways and other paved surfaces;
- if the collapse is caused by a cause of loss listed in 2.b. through 2.f., we will pay for loss or damage to that property only if:
- a. Such loss or damage is a direct result of the collapse of a building insured under this Coverage Form; and
  - b. The property is Covered Property under this Coverage Form.
4. If personal property abruptly falls down or caves in and such collapse is not the result of collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:
- a. The collapse was caused by a Cause of Loss listed in 2.a. through 2.f. above;
  - b. The personal property which collapses is inside a building; and
  - c. The property which collapses is not of a kind listed in 3. above, regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph 4. does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.

Collapse of personal property does not mean cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

5. This Additional Coverage, Collapse, will not increase the Limits of Insurance provided in this Coverage Part.

**E. Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria**

1. The coverage described in E.2. and E.6. only applies when the "fungus", wet or dry rot or bacteria is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.
- a. A "specified cause of loss" other than fire or lightning; or
  - b. Flood, if the Flood Coverage Endorsement applies to the affected premises.
2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:
- a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
  - b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and
  - c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present.
3. The coverage described under E.2. of this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified causes of loss" (other than fire or lightning) and Flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus", wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungus", wet or dry rot or bacteria continues to be present or active, or recurs, in a later policy period.

4. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus", wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

If there is covered loss or damage to Covered Property, not caused by "fungus", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungus", wet or dry rot or bacteria causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

5. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph F.2. (Water Damage, Other Liquids, Powder Or Molten Material Damage) of this Causes Of Loss Form or under the Additional Coverage – Collapse.
6. The following, 6.a. or 6.b., applies only if Business Income and/or Extra Expense coverage applies to the described premises and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income and/or Extra Expense coverage form.
- a. If the loss which resulted in "fungus", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to loss or damage to property caused by "fungus", wet or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.
- b. If a covered "suspension" of "operations" was caused by loss or damage other than "fungus", wet or dry rot or bacteria but remediation of "fungus", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

## F. Additional Coverage Extensions

### 1. Property In Transit

This Extension applies only to your personal property to which this form applies.

- a. You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.
- b. Loss or damage must be caused by or result from one of the following causes of loss:
- (1) Fire, lightning, explosion, windstorm or hail, riot or civil commotion, or vandalism.
  - (2) Vehicle collision, upset or overturn. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the road bed.
  - (3) Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.

- c. The most we will pay for loss or damage under this Extension is \$5,000.

This Coverage Extension is additional insurance. The Additional Condition, Coinsurance, does not apply to this Extension.

### 2. Water Damage, Other Liquids, Powder Or Molten Material Damage

If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes. This Coverage Extension does not increase the Limit of Insurance.

### 3. Glass

- a. We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.



- b. We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

This Coverage Extension, F.3., does not increase the Limit of Insurance.

#### G. Definitions

1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
2. "Specified Causes of Loss" means the following: Fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.
  - a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
    - (1) The cost of filling sinkholes; or

- (2) Sinking or collapse of land into man-made underground cavities.

- b. Falling objects does not include loss or damage to:

- (1) Personal property in the open; or

- (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.

- c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the described premises and contains water or steam.

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION OF CERTAIN COMPUTER-RELATED LOSSES**

This endorsement modifies insurance provided under the following:

COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART  
STANDARD PROPERTY POLICY

- A.** We will not pay for loss ("loss") or damage caused directly or indirectly by the following. Such loss ("loss") or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss ("loss") or damage.
- 1.** The failure, malfunction or inadequacy of:
    - a.** Any of the following, whether belonging to any insured or to others:
      - (1)** Computer hardware, including micro-processors;
      - (2)** Computer application software;
      - (3)** Computer operating systems and related software;
      - (4)** Computer networks;
      - (5)** Microprocessors (computer chips) not part of any computer system; or
      - (6)** Any other computerized or electronic equipment or components; or
    - b.** Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph A.1.a. of this endorsement;
- due to the inability to correctly recognize, process, distinguish, interpret or accept one or more dates or times. An example is the inability of computer software to recognize the year 2000.
- 2.** Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph A.1. of this endorsement.
- B.** If an excluded Cause of Loss as described in Paragraph A. of this endorsement results:
- 1.** In a Covered Cause of Loss under the Crime and Fidelity Coverage Part, the Commercial Inland Marine Coverage Part or the Standard Property Policy; or
  - 2.** Under the Commercial Property Coverage Part:
    - a.** In a "Specified Cause of Loss", or in elevator collision resulting from mechanical breakdown, under the Causes of Loss – Special Form; or
    - b.** In a Covered Cause of Loss under the Causes Of Loss – Basic Form or the Causes Of Loss – Broad Form;
- we will pay only for the loss ("loss") or damage caused by such "Specified Cause of Loss", elevator collision, or Covered Cause of Loss.
- C.** We will not pay for repair, replacement or modification of any items in Paragraphs A.1.a. and A.1.b. of this endorsement to correct any deficiencies or change any features.

**COMMERCIAL PROPERTY****COMMERCIAL PROPERTY CONDITIONS**

This Coverage Part is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

**A. CONCEALMENT, MISREPRESENTATION OR FRAUD**

This Coverage Part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

**B. CONTROL OF PROPERTY**

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Part at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

**C. INSURANCE UNDER TWO OR MORE COVERAGES**

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

**D. LEGAL ACTION AGAINST US**

No one may bring a legal action against us under this Coverage Part unless:

1. There has been full compliance with all of the terms of this Coverage Part; and
2. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

**E. LIBERALIZATION**

If we adopt any revision that would broaden the coverage under this Coverage Part without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

**F. NO BENEFIT TO BAILEE**

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

**G. OTHER INSURANCE**

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

**H. POLICY PERIOD, COVERAGE TERRITORY**

Under this Coverage Part:

1. We cover loss or damage commencing:
  - a. During the policy period shown in the Declarations; and
  - b. Within the coverage territory.
2. The coverage territory is:
  - a. The United States of America (including its territories and possessions);
  - b. Puerto Rico; and
  - c. Canada.

**I. TRANSFER OF RIGHTS OF RECOVERY  
AGAINST OTHERS TO US**

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

1. Prior to a loss to your Covered Property or Covered Income.
2. After a loss to your Covered Property or Covered Income only if, at time of loss, that party is one of the following:
  - a. Someone insured by this insurance;
  - b. A business firm:
    - (1) Owned or controlled by you; or
    - (2) That owns or controls you; or
  - c. Your tenant.

This will not restrict your insurance.

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## COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

### A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

### B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

### C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

### D. Inspections And Surveys

1. We have the right to:
  - a. Make inspections and surveys at anytime;

- b. Give you reports on the conditions we find; and

- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
  - a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

### E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

### F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## PROTECTIVE SAFEGUARDS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
FARM COVERAGE PART

### SCHEDULE\*

Prem. No.	Bldg. No.	Protective Safeguards Symbols Applicable
1-2	1	P-9
Describe any "P-9": No Aluminum wiring, Sprinklered.		
* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.		

**A. The following is added to the:**

Commercial Property Conditions  
General Conditions in the  
Farm Property – Other Farm  
Provisions Form – Additional Coverages,  
Conditions, Definitions  
General Conditions in the Mobile Agricultural  
Machinery and Equipment Coverage Form  
General Conditions in the Livestock Coverage  
Form

### PROTECTIVE SAFEGUARDS

- As a condition of this insurance, you are required to maintain the protective devices or services listed in the Schedule above.
- The protective safeguards to which this endorsement applies are identified by the following symbols:

**"P-1" Automatic Sprinkler System,**  
including related supervisory services.

Automatic Sprinkler System means:

- Any automatic fire protective or extinguishing system, including connected:
  - (1) Sprinklers and discharge nozzles;
  - (2) Ducts, pipes, valves and fittings;

- (3) Tanks, their component parts and supports; and

- (4) Pumps and private fire protection mains.

b. When supplied from an automatic fire protective system:

- (1) Non-automatic fire protective systems; and

- (2) Hydrants, standpipes and outlets.

**"P-2" Automatic Fire Alarm,** protecting the entire building, that is:

- Connected to a central station; or
- Reporting to a public or private fire alarm station.

**"P-3" Security Service,** with a recording system or watch clock, making hourly rounds covering the entire building, when the premises are not in actual operation.

**"P-4" Service Contract** with a privately owned fire department providing fire protection service to the described premises.

**"P-9"** The protective system described in the Schedule.



B. The following is added to the EXCLUSIONS section of:

CAUSES OF LOSS – BASIC FORM  
CAUSES OF LOSS – BROAD FORM  
CAUSES OF LOSS – SPECIAL FORM  
MORTGAGE HOLDERS ERRORS AND  
OMISSIONS COVERAGE FORM  
STANDARD PROPERTY POLICY  
CAUSES OF LOSS FORM – FARM  
MOBILE AGRICULTURAL MACHINERY AND  
EQUIPMENT COVERAGE FORM

We will not pay for loss or damage caused by or resulting from fire if, prior to the fire, you:

1. Knew of any suspension or impairment in any protective safeguard listed in the Schedule above and failed to notify us of that fact; or
2. Failed to maintain any protective safeguard listed in the Schedule above, and over which you had control, in complete working order.

If part of an Automatic Sprinkler System is shut off due to breakage, leakage, freezing conditions or opening of sprinkler heads, notification to us will not be necessary if you can restore full protection within 48 hours.

### SERVICE OF PROCESS

The Commissioner of Insurance of the State of IL is hereby designated the true and lawful attorney of the Company upon whom may be served all lawful process in any action, suit or proceeding arising out of this policy. The Company further designates:

Kenneth Meagher  
General Counsel  
Seaview House  
70 Seaview Avenue  
Stamford, CT 06902-6040

as its agent in IL to whom such process shall be forwarded by the Commissioner of Insurance.

For Illinois exposures, the Insurer further designates the Director of the Illinois Division of Insurance and his successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the insured or any beneficiary hereunder arising out of an Illinois exposure and this contract of insurance.

All other terms and conditions of this policy remain unchanged.



(Authorized Representative)

POLICY NUMBER: FCI 004 3213

COMMERCIAL PROPERTY  
CP 04 05 04 02**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****ORDINANCE OR LAW COVERAGE**

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM  
CONDOMINIUM ASSOCIATION COVERAGE FORM  
STANDARD PROPERTY POLICY**SCHEDULE\***

Bldg. No./ Prem. No.	Cov. A	Cov. B Limit Of Insur.	Cov. C Limit Of Insur.	Cov. A, B And C Combined Limit Of Insur.
1-2 / 1	x	\$	\$	\$ 1,000,000 **
/ 0	X	\$ 0	\$ 0	\$ 0 **
/ 0	X	\$ 0	\$ 0	\$ 0 **

\*\*Do not enter a Combined Limit of Insurance if individual Limits of Insurance are selected for Coverages B and C, or if one of these Coverages is not applicable.

**A.** Each Coverage – Coverage A, Coverage B and Coverage C – is provided under this endorsement only if that Coverage(s) is chosen by entry in the above Schedule and then only with respect to the building identified for that Coverage(s) in the Schedule.

**B. Application Of Coverage(s)**

The Coverage(s) provided by this endorsement apply only if both **B.1.** and **B.2.** are satisfied and are then subject to the qualifications set forth in **B.3.**

**1. The ordinance or law:**

- a. Regulates the demolition, construction or repair of buildings, or establishes zoning or land use requirements at the described premises; and

- b. Is in force at the time of loss.

But coverage under this endorsement applies only in response to the minimum requirements of the ordinance or law. Losses and costs incurred in complying with recommended actions or standards that exceed actual requirements are not covered under this endorsement.

2.a. The building sustains direct physical damage that is covered under this policy and such damage results in enforcement of the ordinance or law; or

b. The building sustains both direct physical damage that is covered under this policy and direct physical damage that is not covered under this policy, and the building damage in its entirety results in enforcement of the ordinance or law.

c. But if the building sustains direct physical damage that is not covered under this policy, and such damage is the subject of the ordinance or law, then there is no coverage under this endorsement even if the building has also sustained covered direct physical damage.

3. In the situation described in **B.2.b.** above, we will not pay the full amount of loss otherwise payable under the terms of Coverages A, B, and/or C of this endorsement. Instead, we will pay a proportion of such loss; meaning the proportion that the covered direct physical damage bears to the total direct physical damage.

(Section H. of this endorsement provides an example of this procedure.)

However, if the covered direct physical damage, alone, would have resulted in enforcement of the ordinance or law, then we will pay the full amount of loss otherwise payable under the terms of Coverages A, B and/or C of this endorsement.

- C. We will not pay under Coverage A, B or C of this endorsement for:
1. Enforcement of any ordinance or law which requires the demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or
  2. The costs associated with the enforcement of any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.

**D. Coverage**

**1. Coverage A – Coverage For Loss To The Undamaged Portion Of The Building**

With respect to the building that has sustained covered direct physical damage, we will pay under Coverage A for the loss in value of the undamaged portion of the building as a consequence of enforcement of an ordinance or law that requires demolition of undamaged parts of the same building.

Coverage A is included within the Limit of Insurance shown in the Declarations as applicable to the covered building. Coverage A does not increase the Limit of Insurance.

**2. Coverage B – Demolition Cost Coverage**

With respect to the building that has sustained covered direct physical damage, we will pay the cost to demolish and clear the site of undamaged parts of the same building, as a consequence of enforcement of an ordinance or law that requires demolition of such undamaged property.

The Coinsurance Additional Condition does not apply to Demolition Cost Coverage.

**3. Coverage C – Increased Cost Of Construction Coverage**

- a. With respect to the building that has sustained covered direct physical damage, we will pay the increased cost to:

- (1) Repair or reconstruct damaged portions of that building; and/or
- (2) Reconstruct or remodel undamaged portions of that building, whether or not demolition is required;

when the increased cost is a consequence of enforcement of the minimum requirements of the ordinance or law.

However:

- (1) This coverage applies only if the restored or remodeled property is intended for similar occupancy as the current property, unless such occupancy is not permitted by zoning or land use ordinance or law.
- (2) We will not pay for the increased cost of construction if the building is not repaired, reconstructed or remodeled.

The Coinsurance Additional Condition does not apply to Increased Cost of Construction Coverage.

- b. When a building is damaged or destroyed and Coverage C applies to that building in accordance with 3.a. above, coverage for the increased cost of construction also applies to repair or reconstruction of the following, subject to the same conditions stated in 3.a.:

- (1) The cost of excavations, grading, backfilling and filling;
- (2) Foundation of the building;
- (3) Pilings; and
- (4) Underground pipes, flues and drains.

The items listed in b.(1) through b.(4) above are deleted from Property Not Covered, but only with respect to the coverage described in this Provision, 3.b.

**E. Loss Payment**

1. All following loss payment Provisions, E.2. through E.5., are subject to the apportionment procedures set forth in Section B.3. of this endorsement.

2. When there is a loss in value of an undamaged portion of a building to which Coverage A applies, the loss payment for that building, including damaged and undamaged portions, will be determined as follows:
  - a. If the Replacement Cost Coverage Option applies and the property is being repaired or replaced, on the same or another premises, we will not pay more than the lesser of:
    - (1) The amount you would actually spend to repair, rebuild or reconstruct the building, but not for more than the amount it would cost to restore the building on the same premises and to the same height, floor area, style and comparable quality of the original property insured; or
    - (2) The Limit of Insurance shown in the Declarations as applicable to the covered building.
  - b. If the Replacement Cost Coverage Option applies and the property is not repaired or replaced, or if the Replacement Cost Coverage Option does not apply, we will not pay more than the lesser of:
    - (1) The actual cash value of the building at the time of loss; or
    - (2) The Limit of Insurance shown in the Declarations as applicable to the covered building.
3. Unless Paragraph E.5. applies, loss payment under Coverage B – Demolition Cost Coverage will be determined as follows:  
We will not pay more than the lesser of the following:
  - a. The amount you actually spend to demolish and clear the site of the described premises; or
  - b. The applicable Limit of Insurance shown for Coverage B in the Schedule above.
4. Unless Paragraph E.5. applies, loss payment under Coverage C – Increased Cost of Construction Coverage will be determined as follows:
  - a. We will not pay under Coverage C:
    - (1) Until the property is actually repaired or replaced, at the same or another premises; and
    - (2) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.
  - b. If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay under Coverage C is the lesser of:
    - (1) The increased cost of construction at the same premises; or
    - (2) The applicable Limit of Insurance shown for Coverage C in the Schedule above.
  - c. If the ordinance or law requires relocation to another premises, the most we will pay under Coverage C is the lesser of:
    - (1) The increased cost of construction at the new premises; or
    - (2) The applicable Limit of Insurance shown for Coverage C in the Schedule above.
5. If a Combined Limit of Insurance is shown for Coverages B and C in the Schedule above, Paragraphs E.3. and E.4. of this endorsement do not apply with respect to the building that is subject to the Combined Limit, and the following loss payment provisions apply instead:  
The most we will pay, for the total of all covered losses for Demolition Cost and Increased Cost of Construction, is the Combined Limit of Insurance shown for Coverages B and C in the Schedule above. Subject to this Combined Limit of Insurance, the following loss payment provisions apply:
  - a. For Demolition Cost, we will not pay more than the amount you actually spend to demolish and clear the site of the described premises.
  - b. With respect to the Increased Cost of Construction:
    - (1) We will not pay for the increased cost of construction:
      - (a) Until the property is actually repaired or replaced, at the same or another premises; and
      - (b) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.
    - (2) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the increased cost of construction is the increased cost of construction at the same premises.



- (3) If the ordinance or law requires relocation to new premises, the most we will pay for the increased cost of construction is the increased cost of construction at the new premises.

- F. The terms of this endorsement apply separately to each building to which this endorsement applies.
- G. Under this endorsement we will not pay for loss due to any ordinance or law that:
1. You were required to comply with before the loss, even if the building was undamaged; and
  2. You failed to comply with.
- H. Example of Proportionate Loss Payment for Ordinance Or Law Coverage Losses (procedure as set forth in Section B.3. of this endorsement.)
- Assume:
- Wind is a Covered Cause of Loss; Flood is an excluded Cause of Loss
  - The building has a value of \$200,000
  - Total direct physical damage to building: \$100,000
  - The ordinance or law in this jurisdiction is enforced when building damage equals or exceeds 50% of the building's value
  - Portion of direct physical damage that is covered (caused by wind): \$30,000
  - Portion of direct physical damage that is not covered (caused by flood): \$70,000
  - Loss under Ordinance Or Law Coverage C of this endorsement: \$60,000

**Step 1:**

Determine the proportion that the covered direct physical damage bears to the total direct physical damage.

$$\$30,000 \div \$100,000 = .30$$

**Step 2:**

Apply that proportion to the Ordinance or Law loss.

$$\$60,000 \times .30 = \$18,000$$

In this example, the most we will pay under this endorsement for the Coverage C loss is \$18,000, subject to the applicable Limit of Insurance and any other applicable provisions.

**Note:** The same procedure applies to losses under Coverages A and B of this endorsement.

- I. The following definition is added:

"Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.

IL 09 56 11 02

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION OF CERTIFIED ACTS AND OTHER ACTS OF TERRORISM; COVERAGE FOR CERTAIN FIRE LOSSES**

This endorsement modifies insurance provided under the following:

COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
FARM COVERAGE PART  
STANDARD PROPERTY POLICY

**A.** The following definitions are added with respect to the provisions of this endorsement:

1. "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002. The criteria contained in that Act for a "certified act of terrorism" include the following:
  - a. The act resulted in aggregate losses in excess of \$5 million; and
  - b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
2. "Other act of terrorism" means a violent act or an act that is dangerous to human life, property or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not certified as a terrorist act pursuant to the federal Terrorism Risk Insurance Act of 2002.

**B.** The following exclusion is added:

### **EXCLUSION OF CERTIFIED ACTS AND OTHER ACTS OF TERRORISM**

We will not pay for loss or damage caused directly or indirectly by a "certified act of terrorism" or an "other act of terrorism". Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. **But with respect to an "other act of terrorism", this exclusion applies only when one or more of the following are attributed to such act:**

1. The terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
2. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials; or
3. The total of insured damage to all types of property in the United States, its territories and possessions, Puerto Rico and Canada exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the terrorism and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions. Multiple incidents of "other acts of terrorism" which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident.

With respect to this Item **B.3.**, the immediately preceding paragraph describes the threshold used to measure the magnitude of an "other act of terrorism" and the circumstances in which the threshold will apply, for the purpose of determining whether this exclusion will apply to that incident. When the exclusion applies to an "other act of terrorism", there is no coverage under this Coverage Part or Standard Property Policy.

**C. Exception Covering Certain Fire Losses**

If a "certified act of terrorism" or an "other act of terrorism" results in fire, we will pay for the loss or damage caused by that fire. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under Business Income and/or Extra Expense coverage forms or endorsements which apply to those forms, or to the Legal Liability Coverage Form or the Leasehold Interest Coverage Form.

With respect to fire resulting from any one or more "certified acts of terrorism" under the federal Terrorism Risk Insurance Act of 2002, we will not pay any amounts for which we are not responsible under the terms of that Act (including subsequent action of Congress pursuant to the Act) due to the application of any clause which results in a cap on our liability for payments for terrorism losses.

**D. Application Of Other Exclusions**

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Coverage Part or Standard Property Policy, such as losses excluded by the Nuclear Hazard Exclusion or the War And Military Action Exclusion.

POLICY NUMBER:

IL 09 95 01 07

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## CONDITIONAL EXCLUSION OF TERRORISM (RELATING TO DISPOSITION OF FEDERAL TERRORISM RISK INSURANCE ACT)

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART  
 COMMERCIAL INLAND MARINE COVERAGE PART  
 COMMERCIAL PROPERTY COVERAGE PART  
 EQUIPMENT BREAKDOWN PROTECTION COVERAGE FORM  
 FARM COVERAGE PART  
 STANDARD PROPERTY POLICY

### SCHEDULE

The <b>Exception Covering Certain Fire Losses</b> (Paragraph D.) applies to property located in the following state(s), if covered under the indicated Coverage Form, Coverage Part or Policy:	
State(s)	Coverage Form, Coverage Part Or Policy
All States- excluding Alaska & Idaho	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

#### A. Applicability Of The Provisions Of This Endorsement

1. The provisions of this endorsement become applicable commencing on the date when any one or more of the following first occurs. But if your policy (meaning the policy period in which this endorsement applies) begins after such date, then the provisions of this endorsement become applicable on the date your policy begins.

- a. The federal Terrorism Risk Insurance Program ("Program"), established by the Terrorism Risk Insurance Act, has terminated with respect to the type of insurance provided under this Coverage Form, Coverage Part or Policy; or

b. A renewal, extension or replacement of the Program has become effective without a requirement to make terrorism coverage available to you and with revisions that:

- (1) Increase our statutory percentage deductible under the Program for terrorism losses. (That deductible determines the amount of all certified terrorism losses we must pay in a calendar year, before the federal government shares in subsequent payment of certified terrorism losses.); or
- (2) Decrease the federal government's statutory percentage share in potential terrorism losses above such deductible; or
- (3) Redefine terrorism or make insurance coverage for terrorism subject to provisions or requirements that differ from those that apply to other types of events or occurrences under this policy.

2. If the provisions of this endorsement become applicable, such provisions:

- a. Supersede any terrorism endorsement already endorsed to this policy that addresses "certified acts of terrorism" and/or "other acts of terrorism", but only with respect to loss or damage from an incident(s) of terrorism (however defined) that occurs on or after the date when the provisions of this endorsement become applicable; and
- b. Remain applicable unless we notify you of changes in these provisions, in response to federal law.

3. If the provisions of this endorsement do NOT become applicable, any terrorism endorsement already endorsed to this policy, that addresses "certified acts of terrorism" and/or "other acts of terrorism", will continue in effect unless we notify you of changes to that endorsement in response to federal law.

B. The following definition is added and applies under this endorsement wherever the term terrorism is enclosed in quotation marks.

"Terrorism" means activities against persons, organizations or property of any nature:

1. That involve the following or preparation for the following:
  - a. Use or threat of force or violence; or
  - b. Commission or threat of a dangerous act; or
  - c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
2. When one or both of the following applies:
  - a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
  - b. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

C. The following exclusion is added:

#### **EXCLUSION OF TERRORISM**

We will not pay for loss or damage caused directly or indirectly by "terrorism", including action in hindering or defending against an actual or expected incident of "terrorism". Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. **But this exclusion applies only when one or more of the following are attributed to an incident of "terrorism":**

1. The "terrorism" is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or
2. Radioactive material is released, and it appears that one purpose of the "terrorism" was to release such material; or
3. The "terrorism" is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
4. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials; or

5. The total of insured damage to all types of property in the United States, its territories and possessions, Puerto Rico and Canada exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the "terrorism" and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions. Multiple incidents of "terrorism" which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the threshold is exceeded.

With respect to this Item C.5., the immediately preceding paragraph describes the threshold used to measure the magnitude of an incident of "terrorism" and the circumstances in which the threshold will apply, for the purpose of determining whether this Exclusion will apply to that incident. When the Exclusion applies to an incident of "terrorism", there is no coverage under this Coverage Form, Coverage Part or Policy.

#### **D. Exception Covering Certain Fire Losses**

The following exception to the Exclusion Of Terrorism applies only if indicated and as indicated in the Schedule of this endorsement.

If "terrorism" results in fire, we will pay for the loss or damage caused by that fire, subject to all applicable policy provisions including the Limit of Insurance on the affected property. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under Business Income and/or Extra Expense coverage forms or endorsements that apply to those coverage forms, or to the Legal Liability Coverage Form or the Leasehold Interest Coverage Form.

#### **E. Application Of Other Exclusions**

1. When the Exclusion Of Terrorism applies in accordance with the terms of C.1. or C.2., such exclusion applies without regard to the Nuclear Hazard Exclusion in this Coverage Form, Coverage Part or Policy.
2. The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss or damage which would otherwise be excluded under this Coverage Form, Coverage Part or Policy, such as losses excluded by the Nuclear Hazard Exclusion or the War And Military Action Exclusion.



**FOR USE WITH: IL 09 95 Conditional Exclusion Of Terrorism  
(Relating To Disposition Of Federal Terrorism Risk Insurance Act)  
IL 00 56 Idaho – Conditional Exclusion Of Terrorism (Relating To  
Disposition Of Federal Terrorism Risk Insurance Act); Coverage For  
Certain Fire Losses**

**NOTICE TO POLICYHOLDERS**

**POTENTIAL RESTRICTIONS OF TERRORISM COVERAGE**

This Notice has been prepared in conjunction with the **POTENTIAL** implementation of changes related to coverage of terrorism under your policy.

The Terrorism Risk Insurance Act established a program (Terrorism Risk Insurance Program) within the Department of the Treasury, under which the federal government shares, with the insurance industry, the risk of loss from future terrorist attacks. That Program is subject to a termination date of December 31, 2007 unless extended by the federal government. If the federal Program terminates, or is extended with certain changes prior to or during the term of your policy, then the treatment of terrorism under your policy will change. This Notice is being provided to you for the purpose of summarizing potential impact on your coverage. The summary is a brief synopsis of significant exclusionary provisions and limitations.

This Notice does **not** form a part of your insurance contract. The Notice is designed to alert you to coverage restrictions and to other provisions in certain terrorism endorsement(s) in this policy. If there is any conflict between this Notice and the policy (including its endorsements), the provisions of the policy (including its endorsements) apply.

Carefully read your policy, including the endorsements attached to your policy.

**YOUR POLICY DURING TENURE OF THE TERRORISM RISK INSURANCE  
PROGRAM AS THAT PROGRAM EXISTS PURSUANT TO THE TERRORISM  
RISK INSURANCE EXTENSION ACT OF 2005:**

The terrorism endorsement in this policy makes a distinction between "certified acts of terrorism" (which is more fully defined in the endorsement, but involves acts of terrorism that are committed by or on behalf of a foreign interest and generate aggregate losses in excess of \$5 million) and "other acts of terrorism". Both types of terrorism are excluded from coverage but the exclusions are subject to different terms and conditions. The exclusion of "certified acts of terrorism" relates to criteria in the federal Terrorism Risk Insurance Act. The exclusion of coverage for "other acts of terrorism" (terrorist acts other than certified acts) applies only if aggregate insured losses from the event exceed \$25 million, or if the event involves biological or chemical materials under certain

circumstances. With respect to "certified acts of terrorism" and "other acts of terrorism", policy exclusions (for example, the nuclear hazard and war exclusions) and other policy provisions continue to apply.

**Exception Covering Certain Fire Losses:** The terrorism exclusion does not restrict fire coverage under Commercial Property and Farm insurance due to a statutory requirement in this state. Therefore, losses attributable to fire following an act of terrorism, if otherwise covered, remain covered under such insurance.

**POTENTIAL CHANGE TO YOUR POLICY:**

**Endorsement IL 09 95 or IL 00 56 (ID) is attached to your policy. Its provisions become applicable to your policy only if certain events (one or more of them) occur. Those events include the following:**

- If the federal Terrorism Risk Insurance Program (TRIP) terminates with respect to the type of insurance provided under this policy. (TRIP is/was scheduled to terminate at the end of December 31, 2007 unless extended by the federal government.); or
- If TRIP is extended with changes that redefine terrorism, and we are not required to make such revised coverage available to you; or
- If TRIP is extended with changes that make insurance coverage for terrorism subject to provisions or requirements that differ from those that apply to other events or occurrences under this policy, and we are not required to make such revised coverage available to you; or
- If TRIP is extended with changes that increase insurers' statutory percentage deductible under TRIP for terrorism losses, or decrease the federal government's statutory percentage share in potential terrorism losses, and we are not required to make terrorism coverage available to you. Our deductible in 2006 is 17.5% of the total of our previous year's direct earned premiums. In 2007, that figure is 20%. For losses occurring in 2006, the government's share is 90% of the terrorism losses paid by us above the deductible. For losses occurring in 2007, such share is 85%.

**Endorsement IL 09 95 and IL 00 56 (ID) treats terrorism as follows:**

- Coverage for loss or damage arising out of a terrorism incident is excluded only if:
  - The total of all insured damage to all types of property (including business interruption losses sustained by owners or occupants of damaged property), from the incident, exceeds \$25 million. The \$25 million property damage threshold is based on losses sustained by all persons and entities who are affected by an incident of terrorism, and who are insured for the damage, or who would be insured but for a terrorism exclusion; or

*(To determine whether the threshold for property damage (\$25 million) is exceeded, multiple incidents of terrorism which occur within a seventy-two*

*hour period and appear to be linked together or have a related purpose or common leadership behind them shall be considered to be one incident of terrorism.)*

- The terrorism event involves nuclear materials or results in nuclear reaction or radiation or radioactive contamination; or
  - The terrorism event involves the release of radioactive material, and it appears that one purpose of the terrorism was to release such material; or
  - The terrorism event is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
  - The terrorism event involves the release of pathogenic or poisonous biological or chemical materials, and it appears that one purpose of the terrorism was to release such materials.
- 
- The Exception Covering Certain Fire Losses applies only in certain states. If the exception applies in any states under your policy, that is indicated in the Schedule of the terrorism endorsement. If the Exception applies, the Schedule indicates the affected types of insurance in affected states. When the Exception applies, the exclusion of terrorism does not apply to direct loss or damage by fire to Covered Property, with respect to affected types of insurance in affected states.

**See the definition of terrorism for purposes of the terrorism exclusion.**

POLICY NUMBER:

IL 09 85 01 03

**THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF YOUR POLICY IN RESPONSE TO THE DISCLOSURE REQUIREMENTS OF THE TERRORISM RISK INSURANCE ACT OF 2002. THIS ENDORSEMENT DOES NOT GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.**

**DISCLOSURE PURSUANT TO TERRORISM RISK  
INSURANCE ACT OF 2002**

**SCHEDULE\***

**Terrorism Premium (Certified Acts) \$**

**Additional information, if any, concerning the terrorism premium:**

\* Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

**A. Disclosure Of Premium**

In accordance with the federal Terrorism Risk Insurance Act of 2002, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to coverage for terrorist acts certified under that Act. The portion of your premium attributable to such coverage is shown in the Schedule of this endorsement or in the policy Declarations.

**B. Disclosure Of Federal Participation In Payment Of Terrorism Losses**

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 90% of that portion of the amount of such insured losses that exceeds the applicable insurer retention.

IL 01 18 03 99

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ILLINOIS CHANGES**

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART  
FARM COVERAGE PART  
STANDARD PROPERTY POLICY

- A. When this endorsement is attached to Standard Property Policy CP 00 99, the terms Coverage Part and Coverage Form in this endorsement are replaced by the term Policy.
- B. The following is added to the **Legal Action Against Us** Condition:
 

The 2 year period for legal action against us is extended by the number of days between the date the proof of loss is filed with us and the date we deny the claim in whole or in part.
- C. If this policy covers:
  1. The following in a. and b., then Paragraphs 2. and 3. apply:
    - a. Real property used principally for residential purposes up to and including a four family dwelling; or
    - b. Household or personal property that is usual or incidental to the occupancy of any premises used for residential purposes.
  2. The second paragraph of the **Appraisal** Condition is deleted and replaced by the following:
    - a. Each party will pay its own appraiser and bear the other expenses of the appraisal and umpire equally, except as provided in b. below.
    - b. We will pay your appraiser's fee and the umpire's appraisal fee, if the following conditions exist:
      - (1) You demanded the appraisal; and
      - (2) The full amount of loss, as set by your appraiser, is agreed to by our appraiser or by the umpire.
  3. The **Concealment, Misrepresentation Or Fraud** Condition is replaced by the following:
 

**CONCEALMENT, MISREPRESENTATION OR FRAUD**

    - a. This Coverage Part or Coverage Form is void if you or any insured ("insured") commit fraud or conceal or misrepresent a fact in the process leading to the issuance of this insurance, and such fraud, concealment or misrepresentation is stated in the policy or endorsement or in the written application for this policy and:
      - (1) Was made with actual intent to deceive; or
      - (2) Materially affected either our decision to provide this insurance or the hazard we assumed.

However, this condition will not serve as a reason to void this Coverage Part or Coverage Form after the Coverage Part or Coverage Form has been in effect for one year or one policy term, whichever is less.
    - b. This Coverage Part or Coverage Form is void if you or any other insured ("insured"), at any time subsequent to the issuance of this insurance, commit fraud or intentionally conceal or misrepresent a material fact relating to:
      - (1) This Coverage Part or Coverage Form;
      - (2) The Covered Property;
      - (3) Your interest in the Covered Property; or
      - (4) A claim under this Coverage Part or Coverage Form.
    - c. Notwithstanding the limitations stated in 3.a. above, we may cancel the Coverage Part or Coverage Form in accordance with the terms of the Cancellation Condition.

- D.** For the Commercial Property Coverage Part and the Standard Property Policy, the following exclusion and related provisions are added to Paragraph **B.2**. Exclusions in the Causes of Loss Forms and to any Coverage Form or policy to which a Causes of Loss Form is not attached:
1. We will not pay for loss or damage arising out of any act committed:
    - a. By or at the direction of any insured; and
    - b. With the intent to cause a loss.
  2. However, this exclusion will not apply to deny payment to an innocent co-insured who did not cooperate in or contribute to the creation of the loss if:
    - a. The loss arose out of a pattern of criminal domestic violence; and
    - b. The perpetrator of the loss is criminally prosecuted for the act causing the loss.
  3. If we pay a claim pursuant to Paragraph **D.2.**, our payment to the insured is limited to that insured's insurable interest in the property less any payments we first made to a mortgagee or other party with a legal secured interest in the property. In no event will we pay more than the Limit of Insurance.
- E.** The **Intentional Loss Exclusion** in the Causes of Loss Form – Farm Property, Mobile Agricultural Machinery And Equipment Coverage Form and Livestock Coverage Form is replaced by the following:
1. We will not pay for loss ("loss") or damage arising out of any act committed:
    - a. By or at the direction of any "insured"; and
    - b. With the intent to cause a loss ("loss").
  2. This exclusion, however, will not apply to deny payment to an innocent co-"insured" who did not cooperate in or contribute to the creation of the loss ("loss") if:
    - a. The loss ("loss") arose out of a pattern of criminal domestic violence; and
    - b. The perpetrator of the loss ("loss") is criminally prosecuted for the act causing the loss.
  3. If we pay a claim pursuant to Paragraph **E.2.**, our payment to the "insured" is limited to that "insured's" insurable interest in the property less any payments we first made to a mortgagee or other party with a legal secured interest in the property. In no event will we pay more than the Limit of Insurance.



IL 02 84 10 00

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ILLINOIS CHANGES – CANCELLATION AND NONRENEWAL**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY  
COMMERCIAL PROPERTY COVERAGE PART  
FARM COVERAGE PART

- A. The Cancellation Common Policy Condition is replaced by the following:**

### **CANCELLATION**

1. The first Named Insured shown in the Declarations may cancel this policy by mailing to us advance written notice of cancellation.
2. If this policy has been in effect for 60 days or less, except as provided in Paragraphs 9. and 10. below, we may cancel this policy by mailing written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. If this policy has been in effect for more than 60 days, except as provided in Paragraphs 9. and 10. below, we may cancel this policy only for one or more of the following reasons:
  - a. Nonpayment of premium;
  - b. The policy was obtained through a material misrepresentation;
  - c. You have violated any of the terms and conditions of the policy;
  - d. The risk originally accepted has measurably increased;
  - e. Certification to the Director of Insurance of the loss of reinsurance by the insurer which provided coverage to us for all or a substantial part of the underlying risk insured; or
  - f. A determination by the Director that the continuation of the policy could place us in violation of the insurance laws of this State.

If we cancel this policy based on one or more of the above reasons except for nonpayment of premium, we will mail written notice at least 60 days before the effective date of cancellation. When cancellation is for nonpayment of premium, we will mail written notice at least 10 days before the effective date of cancellation.

4. We will mail our notice to you, any mortgagee or lienholder known to us and to the agent or broker, at the last addresses known to us.
5. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
6. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
7. Proof of mailing will be sufficient proof of notice.
8. Our notice of cancellation will state the reason for cancellation.
9. **Real Property Other Than Residential Properties Occupied By 4 Families Or Less:**  
The following applies only if this policy covers real property other than residential property occupied by 4 families or less:

If any one or more of the following conditions exists at 11. For insurance provided under the Commercial Property Coverage Part, the following applies:

a. After a fire loss, permanent repairs to the building have not started within 60 days of satisfactory adjustment of loss, unless the delay is due to a labor dispute or weather conditions.

b. The building has been unoccupied 60 or more consecutive days. This does not apply to:

- (1) Seasonal unoccupancy; or
- (2) Buildings under repair, construction or reconstruction, if properly secured against unauthorized entry.

c. The building has:

- (1) An outstanding order to vacate;
- (2) An outstanding demolition order; or
- (3) Been declared unsafe in accordance with the law.

d. Heat, water, sewer service or public lighting have not been connected to the building for 30 consecutive days or more.

#### 10. Residential Properties Occupied By 4 Families Or Less:

The following applies if this policy covers residential properties occupied by 4 families or less:

If this policy has been in effect for 60 days, or if this is a renewal policy, we may only cancel this policy for one or more of the following reasons:

- a. Nonpayment of premium;
- b. The policy was obtained by misrepresentation or fraud; or
- c. Any act that measurably increases the risk originally accepted.

11. For insurance provided under the Commercial Property Coverage Part, the following applies:

#### GRAIN IN PUBLIC GRAIN WAREHOUSES

(Not applicable to grain owned by the Commodity Credit Corporation)

The following applies only with respect to grain in public grain warehouses:

The first Named Insured or we may cancel this policy at any time by mailing to:

- a. The other; and
  - b. The Director of the Illinois Department of Agriculture (at its Springfield Office);
- 60 days' written notice of cancellation.

B. The following is added:

#### NONRENEWAL

1. If we decide not to renew this policy, we will mail written notice stating the reason for nonrenewal to your last mailing address known to us at least 60 days before the expiration date of the policy. A copy of the notice will also be sent to:

- a. The broker, if known to us, or the agent of record; and
- b. The last known mortgagee or lienholder named in the policy at the last mailing address known to us.

This paragraph does not apply if we have manifested our willingness to renew directly to you.

2. The following provision applies only if this policy covers residential properties occupied by 4 families or less:

If this policy has been issued to you and in effect with us for 5 or more years, we may not fail to renew this policy unless:

- a. The policy was obtained by misrepresentation or fraud;
- b. The risk originally accepted has measurably increased; or
- c. You received 60 days' notice of our intent not to renew as provided in 1. above.

### IN WITNESS ENDORSEMENT

INDIAN HARBOR INSURANCE COMPANY

ADMINISTRATIVE OFFICE: SEAVIEW HOUSE  
70 SEAVIEW AVENUE  
STAMFORD, CT 06902-6040

STATUTORY HOME OFFICE: CT CORPORATION SYSTEMS  
314 EAST THAYER AVENUE  
BISMARCK, ND 58501-4018

It is hereby agreed and understood that the following In Witness Clause supercedes any and all other In Witness clauses in this policy.

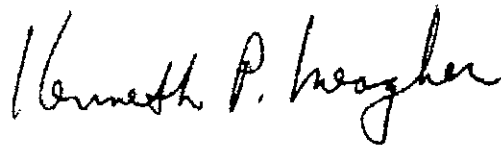
All other provisions remain unchanged.

IN WITNESS WHEREOF, the Company has caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by a duly authorized representative of the Company.



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Dennis P. Kane  
President



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Kenneth P. Meagher  
Secretary

Named Insured: 2930 N. Sheridan, LLC & 3033 N. Sheridan, LLC

Policy Effective Date: 4/13/2007

Policy Expiration Date: 4/13/2008

This endorsement effective: 4/13/2007 forms a part of  
Policy No: FCI 004 3213 issued on behalf of: Indian Harbor Insurance Company

### OCCURRENCE LIMIT OF LIABILITY

It is understood and agreed that the following special terms and conditions apply to this policy:

1. The Limit of Liability of \$10,000,000.00, is a limit of amount per occurrence. Notwithstanding anything to the contrary contained herein, in no event shall the liability of this Company exceed this limit or amount in one disaster, casualty, or event, irrespective of the number of locations involved.
2. The premium for this policy is based upon the Statement of Values on file with the Company, or attached to this policy. In the event of loss hereunder, liability of the Company shall be limited to the least of the following:
  - a) the actual adjusted amount of loss, less applicable deductible(s);
  - b) the total stated value for the property involved, as shown on the latest Statement of Values on file with the Company, less applicable deductible(s);
  - c) the Limit of Liability or amount of Insurance shown on the face of this policy or endorsed on this policy.

All other terms and conditions of this policy remain unchanged.

occliab(F1 2/95)

Named Insured: 2930 N. Sheridan, LLC & 3033 N. Sheridan, LLC

Policy Effective Date: 4/13/2007

Policy Expiration Date: 4/13/2008

This endorsement effective: 4/13/2007 forms a part of  
Policy No: FCI 004 3213 issued on behalf of: Indian Harbor Insurance Company

### **POLLUTION AND CONTAMINATION EXCLUSION**

This policy does not cover loss or damage to property covered caused directly or indirectly by the release or discharge or dispersal of toxic or hazardous substances, contaminants or pollutants. Nor will we cover the cost of removal, disposal, decontamination or replacement of insured property which has been contaminated by toxic or hazardous substances, contaminants or pollutants and which by law or civil authority must be restored, disposed of or decontaminated. Such loss to property covered is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. If loss otherwise covered by this policy occurs and the cost of removal of debris is increased due to the presence of toxic or hazardous substances, contaminants, or pollutants, this policy will only be liable for the cost of debris removal which would have been incurred had no toxic or hazardous substances, contaminants or pollutants been present in, on or about the covered property to be removed.

All other terms and conditions of this policy remain unchanged.

Named Insured: 2930 N. Sheridan, LLC & 3033 N. Sheridan, LLC

Policy Effective Date: 4/13/2007

Policy Expiration Date: 4/13/2008

This endorsement effective: 4/13/2007 forms a part of  
Policy No: FCI 004 3213 issued on behalf of: Indian Harbor Insurance Company

### **ASBESTOS MATERIAL ENDORSEMENT**

Notwithstanding any provision in the Policy to which this endorsement is attached, this policy does not insure against loss or expense resulting from:

1. demolition or increased cost of reconstruction, repair, debris removal or loss of use necessitated by the enforcement of any law or ordinance requiring asbestos material.
2. any governmental direction or request declaring that asbestos material present in or part of or utilized on any undamaged portion of the insured's property can no longer be used for the purpose for which it was intended or installed and must be removed or modified.

The total amount recoverable for both loss to property and asbestos removal expense under this endorsement shall be a part of and not in addition to the limits stated in the Policy.

All other terms and conditions of this policy remain unchanged.

asbest.mat(F1) 2/95



Named Insured: 2930 N. Sheridan, LLC & 3033 N. Sheridan, LLC

Policy Effective Date: 4/13/2007

Policy Expiration Date: 4/13/2008

This endorsement effective: 4/13/2007 forms a part of  
Policy No: FCI 004 3213 issued on behalf of: Indian Harbor Insurance Company

**MINIMUM EARNED PREMIUM**

In the event of cancellation of this policy by the Insured, a minimum of 25 % of the total policy premium shall become earned. Any condition(s) of the policy notwithstanding.

Failure of the Insured to make timely payment of premium shall be considered a request by the Insured for the Company to cancel. In the event of such cancellation by the Company for Non-Payment of Premium, Minimum Premium shall be due and payable.

In the event of any other cancellation by the Company, the earned premium shall be computed pro rata not subject to minimum premium.

All other terms and conditions of this policy remain unchanged.

**ENDORSEMENT NO. 1**

Named Insured: Sheridan Tower Condominium Association 2930 N. Sheridan, LLC 3033 N. Sheridan, LLC

Policy Effective Date: 04/13/2007

Policy Expiration Date: 04/13/2008

This endorsement effective: 12:01 A.M. 06/19/2007 forms a part of  
Policy No: FCI 004 3213 Indian Harbor Insurance Company

**Amendatory Endorsement**

In consideration of the premium shown below, it is hereby understood and agreed this endorsement is attached to and forms part of the above policy and is effective as shown above. This endorsement amends only the changes which are indicated by an (x) in the box immediately preceding such change:

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Policy is   | 6. <input type="checkbox"/> Endorsement No. is null and void                  |
| 2. <input type="checkbox"/> Item(s) listed below are the policy schedule.         | 7. <input type="checkbox"/> Description of item(s) is amended as shown below. |
| 3. <input checked="" type="checkbox"/> Name of Insured is amended as shown below. | 8. <input type="checkbox"/> Limit of Liability is as shown below.             |
| 4. <input type="checkbox"/> Insured mailing address is amended as shown below.    | 9. <input type="checkbox"/> Policy Reinstated                                 |
| 5. <input type="checkbox"/> Policy term is amended to:                            | 10. <input type="checkbox"/> Other, as shown below                            |

.....  
Sheridan Tower Condominium Association  
2930 N. Sheridan, LLC  
3033 N. Sheridan, LLC

**Breakdown:**

\$	0.00 Premium
\$	0.00 Terrorism Premium
\$	0.00 Grand Total

Issue Date: 12/03/2007

  
\_\_\_\_\_  
Authorized Representative

AMOUNT OF POLICY AT TIME  
OF LOSS

\$ 36,024,000.00

ISSUED

04/13/2007

EXPIRES

04/13/2008

**SWORN STATEMENT**  
**IN**  
**PROOF OF LOSS**  
**TO THE**

POLICY NUMBER

FCI 004 3213

AGENCY AT

Avreco

AGENT

Indian Harbor Insurance Co.

of Stamford, CT

By the above indicated policy of insurance you insured

2930 N. Sheridan LLC

against loss by occurrence to the property described according to the terms and conditions of said policy and all forms, endorsements, transfers and assignments attached thereto.

TIME AND  
ORIGIN:

A property loss occurred about 5 o'clock P. M. on the 19th  
day of September 2007. The cause and origin of said loss were: the alleged release of asbestos  
within the 2930 N. Sheridan Building and the enforcement of Illinois Ordinance or law

Property involved in claim: 2930 N. Sheridan Road, Chicago, IL 60657

OCCUPANCY:

The building described, or containing the property described, was occupied at the time of the loss as follows, and for no other purpose whatever: as a rental building partially converted to condominiums some of which had been sold

TITLE AND  
INTEREST:

At the time of the loss the interest of your insured in the property described therein was OWNER.  
No other person or entity had any interest therein or inoubrance thereon, except: those condominium units that had been sold, and the lien holders

CHANGES:

Since the above policy was issued there has been no change in title, use or possession of said property except: none

TOTAL  
INSURANCE:

The Total Insurance covering the described property including this policy and all other policies  
(whether valid or not) binders or agreements to insure was at time of loss \$ 64,824,000.00

VALUE:

☐ FULL REPLACEMENT VALUE ☒ ACTUAL CASH VALUE \$ 45,000,000.00

LOSS:

FULL COST OF REPAIR OR REPLACEMENT \$ 1,846,708.23

APPLICABLE DEPRECIATION \$ -0-

☒ ACTUAL CASH VALUE LOSS ☐ REPLACEMENT COST LOSS \$ 22,988,888.18

LESS DEDUCTIBLES AND/OR PARTICIPATION BY THE INSURED AND/OR PARTIAL PAYMENTS \$ 10,000.00

AMOUNT  
CLAIMED:

☒ ACTUAL CASH VALUE CLAIM ☐ REPLACEMENT COST CLAIM \$ 22,978,888.18

Supplemental Claim, to be filed in accordance with the terms and conditions of the  
Replacement Cost Coverage within \_\_\_\_\_ days from date of  
loss will not exceed \_\_\_\_\_

losses continue

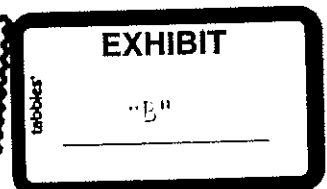
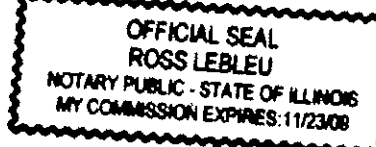
This loss did not originate by any act, design or procurement of the insured, or this subscriber; nothing has been done by or with the privity or consent of the insured or this subscriber to violate the conditions of the policy; no articles are mentioned herein or in annexed schedules but such as were in the building damaged or destroyed, belonging to and in possession of the insured at the time of loss; no property saved has been concealed and no attempt to deceive the company has been made. Any other information that may be required will be furnished and considered a part of this proof.

It is expressly understood and agreed that the furnishing of this blank to the insured or the assistance of an adjuster, or any agent of the insurer in the making of this proof, is not a waiver of any rights of said insurer or of any of the conditions of this policy.

State of IL  
County of COOK

Insured Member  
Insured 2930 N. Sheridan LLC  
By ITS MEMBER (TITLE)

Subscribed and sworn to before me this 21 day of May 2008  
Ross Lebleu Notary Public



**Proof of Loss Statement Analysis****I. "Loss: Full Cost of Repair or Replacement"**

A. Emergency Evacuation and temporary housing expenses for building occupants	\$283,024.68
B. Emergency Environmental Remediation	
1. Alpha Environmental	\$4,276.70
2. EHC Industries (these losses are continuing)	\$771,698.29
3. Environ (these losses are continuing)	\$43,833.80
4. Jensen Environmental (these losses are continuing)	\$316,054.00
5. Legal Fees (these losses are continuing)	\$309,476.97
6. Otis Elevator	\$7,983.55
7. Strategis, Inc.	\$1,730.00
8. Employee Overtime	\$7,130.24
9. OSHA Fine	\$1,500.00
10. Illinois Attorney General Fine Demand	\$100,000.00
TOTAL	\$1,846,708.23

**II. "Actual Cash Value Loss" (In addition to full cost to repair)**

A. Full Cost of Repair or Replacement	\$1,846,708.23
B. Lost Rent (these losses are continuing)	\$84,604.95
C. Interest Carry (these losses are continuing)	\$2,000,000.00 (est).
D. Loan Origination fee	\$576,000.00
E. Attorney Fees	\$9,000.00
F. Appraisal Fee	\$10,000.00

G. Title Fee	\$2,875.00
H. Lost Profit	\$18,459,700.00
TOTAL	\$22,988,888.18

III. "Actual Cash Value Claim"

A. Actual Cash Value Loss	\$22,988,888.18
B. Deductible	\$10,000.00
TOTAL	\$22,978,888.18

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